

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #501
ON DECEMBER 13, 2021

DATE OF REPORT: JANUARY 10, 2022

This report is in response to a complaint filed with our office by _____, on behalf of her daughter, _____. For the remainder of this report, _____ will be referred to as "the student." Ms. _____ will be referred to as "the student's mother," "the complainant," or "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on December 16 and 17, 2021. On December 16, 2021 and January 6, 2022, the investigator spoke via telephone with Dr. Jennifer Harrington, Director of Special Education for USD #501.

In completing this investigation, the complaint investigator reviewed the following materials:

- IEP for this student dated December 18, 2020
- IEP for this student dated October 28, 2021
- Online academic calendar for the district
- Agenda for January 4, 2022 staff training
- District Resolution Proposal
- Accommodations document – teacher
- Accommodations document – student
- IEP at a Glance attendance sheet

Background Information

This investigation involves a fifteen-year-old girl who is enrolled in the tenth grade in her neighborhood high school. The student has received special

education services in the district since fourth grade. She has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) combined type and Anxiety.

Issue

In her written complaint, the parent identified the following issue:

The district has failed to provide the student with accommodations specified in her IEPs.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Parent's Position

The parent asserts that for the entire first semester of the 2021-22 school year, the student's chemistry teacher refused to implement the accommodations specified in the student's IEP. Specifically, the parent contends that the chemistry teacher did not provide the student with class notes, did not accommodate the student's reading needs, did not check for understanding when delivering instruction to the student, did not offer breaks, and did not shorten assignments. According to the parent, the teacher stated that the student could take a picture of what was written on the blackboard as a way of getting class notes, but the parent asserts that strategy was ineffective for those occasions when the student was absent.

The parent also contends that the student was not provided with required accommodations for the first quarter of the 2021-22 school year in her English and geometry classes but those situations have been resolved.

District's Position

The district does not dispute the parent's allegations regarding the lack of provision of accommodations by the student's chemistry teacher.

Investigative Findings

The "Accommodations" section of the student's December 18, 2020 IEP stated that the student required the following accommodations:

- Extended time on tests, quizzes, and assignments (1.5 x the original amount);
- separate, quiet, small group or individual setting provided;
- use of a handheld or electronic calculator;
- copy of classroom notes;
- text to speech and speech to text (access to apps on Chromebook);
- shortened assignments;
- not punished or counted off for misspelled words when unable to use spell check; and
- use of a student generated math formula/equation sheet.

The Accommodations section of the student's October 28, 2021 IEP states that the student requires the following accommodations:

- Extended time to complete assignments and assessments (1.5 x the original amount);
- read aloud (on daily assignments and assessments);
- checks for understanding for reading tasks;
- access to spell checker;
- access to a handheld or electronic calculator;
- copy of lecture notes;
- separate, quiet setting to complete assignments;
- preferential seating;
- scheduled breaks to help manage pain symptoms and to help her refocus as needed;

- accommodations related to managing physical needs in light of her medical diagnosis – bathroom breaks, frequent snacks, etc.; and
- access to the use of a paper copy of formulas/equations in math classes.

Parent/teacher conferences for the district were held on October 20 and 21, 2021. At that time, the parent was concerned about the student's failing grades in English, geometry, and chemistry. The parent met with the chemistry teacher and asked the teacher if she was aware that the student had an IEP. According to the parent, the teacher stated that she did not know that the student had an IEP but stated that she would not provide any accommodations that were specified in the student's IEP.

The parent then spoke with special education staff about her concerns and learned that a substitute teacher had been assigned to the student's English class at the beginning of the 2021-22 school year. The parent told the investigator that since the regular teacher returned to the classroom, accommodations were provided, and the student's grades improved.

The parent told the investigator that the student had been enrolled in an advanced level geometry classroom at the start of the 2021-22 school year. After learning of the parent's concerns, the district re-assigned the student to a different level geometry class. According to the parent, this change was positive for the student, and her grades improved.

The parent told the investigator that she was satisfied with the changes that the district made with regard to the student's English and geometry classes, but she continued to see no action taken regarding the student's chemistry class. The parent states that she made additional contacts with special education department staff and building administration regarding the student's chemistry teacher.

Summary and Conclusions

The district stipulates that the student's IEP was not implemented as written with regard to the provision of general education accommodations in the student's chemistry class. A violation of special education statutes and regulations is substantiated on this issue.

Actions Taken By the District After This Complaint Was Filed

After this complaint was filed on December 13, 2021, the parent and the school-based team began to address the parent's request that the student be considered exempt from tests or assignments where accommodations were not provided. The parent told the investigator that she agreed with the school's proposal that the student's chemistry grade would be frozen at 62%, that the student would not be required to attend chemistry class for the remainder of the semester, and that the student would not be required to take a final chemistry exam.

The parent remained concerned, however, about on-going services for her daughter, about the failure of the chemistry teacher to provide accommodations to other special education students in the class, and about general communication regarding the needs of special education students in the building since the chemistry teacher had told the parent that she was unaware that the student had an IEP.

On December 27, 2021, the parent met with the director of special education and the building principal to further discuss her concerns. On January 3, 2022, the director of special education provided the parent and the investigator with the district's proposed plan to address issues raised in this complaint. The director and the investigator reviewed that plan in a telephone call on January 6, 2022 and modifications were made to the document for the purpose of clarity.

The district's plan includes the following actions:

- All certified staff and paraeducators at the student's school received training on January 4, 2022 focusing on student accommodations/modifications for special education students. The training involved an open guided discussion of what to look for in a student's IEP at a Glance. Special education service providers were available to provide any needed clarification.
- Each general education teacher was provided with an IEP at a Glance for all of the special education students enrolled in their classes and were provided the opportunity to ask special education service providers any clarifying questions about student accommodations.

- Any certified staff member who was absent for the January 4, 2022 session will be provided training within one week of their return to work.
- Access to IEP at a Glance documents was established through Google Drive. Each IEP case manager created a folder for his/her caseload. A folder for each student on those caseloads was then added to each special education teacher's folder. A PDF of each student's IEP at a Glance was added to each student's folder. Every teacher on a student's schedule has been given access to the student's folder. If teachers changed for the second semester, access has been modified accordingly.
- If a student's IEP is amended through an annual review, an updated IEP at a Glance will be added to the student's file with a "2" added to the title of the document.
- IEP at a Glance forms are also shared via email. When that occurs, teachers receive an email notification that the document had been shared. When teachers open the email, they can click on a PDF of the IEP at a Glance and access the document.
- The Special Education Consulting Teacher was also given access to student files and is notified via email when a student's IEP at a Glance is shared with a classroom teacher.
- At the start of each new semester, general education teachers will be asked to sign off that they have received their student's IEP at a Glance in either electronic or hard copy form.
- Special education department and administration at the building will follow up in weekly department meetings with general education teachers 4 weeks after completion of initial training to ensure that the accommodations/modifications specified in the IEPs of special education students in the building are being provided appropriately for each student.
- As a part of each student's annual IEP review, general education teachers and students will be asked to complete a "Verification Form" related to the provision of accommodations/modifications.
- Special education teachers will verify with each special education student that they are receiving the accommodations in their general education classes on a consistent basis.

Additionally, with regard to the student at the center of this complaint, the following plan will be implemented:

- The student's IEP will be amended prior to January 17, 2022 to reflect a class change. A draft amendment has been developed and will be provided to the parent.
- The student's revised IEP will also include an amendment to the "Supports for School Personnel" portion of the document. The section will include the statement "Teachers will receive a hard copy of the student's IEP at a Glance at the beginning of each new semester, or whenever the student's IEP is amended."
- The parent and the student will be provided the opportunity to choose between receiving hard copies of notes or of receiving notes electronically. If the hard copy option is chosen, the student and parent will also determine where notes will be picked up.

Corrective Action

Information gathered in the course of this investigation has identified noncompliance with special education statutes and regulations. Specifically, violations were substantiated with regard to 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) which require that the district provide a FAPE to students by implementing their IEPs as written.

Therefore, USD #501 is directed to take the following actions:

- 1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written and by providing the student with the accommodations that are specified in her October 28, 2021 IEP unless or until those accommodations are amended or deleted by the student's IEP team.
- 2) Submit to SETS, by no later than February 1, 2022, a copy of an amended IEP for this student and associated prior written notice documentation reflecting changes to the student's class schedule and modifications to "Supports for School Personnel."

- 3) Submit to SETS, by no later than June 1, 2022, a summative report of the district's implementation of its plan to address the issues raised in this complaint. The summary should include:
 - a) Verification that all general education staff members have received the training initially delivered on January 4, 2022;
 - b) Evidence to show that follow up on accommodation implementation was completed 4 weeks after the January 4, 2022 training; and
 - c) Evidence to show that accommodation verification forms were completed by staff and students.
 - d) If verification forms indicate that accommodations have not been provided to any or all students as required by each student's IEP, the district's summative report should also include a plan for additional staff training and monitoring of accommodation implementation for the 2022-23 school year.

- 4) Further, USD #501 shall, within 10 calendar days of the date of this report, submit to SETS one of the following:
 - a) A statement verifying acceptance of the corrective action or actions specified in this report;
 - b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
 - c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f).

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.



Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated,

the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)