

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT  
FILED AGAINST  
MARYSVILLE PUBLIC SCHOOLS, USD #364  
ON FEBRUARY 8, 2022

DATE OF REPORT: MARCH 9, 2022

This report is in response to a complaint filed with our office by \_\_\_\_\_ on behalf of his son, \_\_\_\_\_. \_\_\_\_\_ will be referred to as "the student" in the remainder of this report. Mr. and Mrs. \_\_\_\_ will be referred to as "the parents." Mr. \_\_\_\_\_ will be referred to as "the parent." Mrs. \_\_\_\_\_ will be referred to as "the student's mother."

Investigation of Complaint

The complaint Investigator spoke by telephone with Caroline Green, Director of Special Education for the Marshall County Special Education Cooperative, on February 14 and 25, and March 2, 2022. The investigator spoke by telephone with the student's father and mother on February 18, 2022.

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

- Notice of Meeting dated March 23, 2021
- IEP for the student dated April 14, 2021
- Email exchanges dated August 30 and 31, 2021 between the algebra teacher and the parents
- Email dated September 6, 2021 from the parent to the principal, the director of special education, the student's special education teacher, the algebra teacher, and the chemistry teacher
- Email dated September 7, 2021 from the principal to the parent
- Email dated September 7, 2021 from the student's mother to district staff
- Email exchange dated September 8, 2021 between the director of special education and the parent
- Email dated September 9, 2021 from the principal to the parent

- Notice of Meeting dated September 9, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 14, 2021
- Email exchange dated September 20, 2021 between the student's mother and the director of special education
- Email dated September 20, 2021 from the principal to the student's mother
- Notice of Meeting dated September 21, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 21, 2021
- Email dated September 28, 2021 from the Dean of Instruction at the community college to the student's algebra and chemistry teachers
- Academic accommodations for the community college dated September 28, 2021
- Email dated September 29, 2021 from the Dean of Instruction at the community college to district staff
- Prior Written Notice for Identification, Initial Services, Placement, Change of Services, Change of Placement, and Request for Consent dated October 9, 2021
- Notice of Meeting dated October 20, 2021
- IEP for the student dated October 20, 2021
- Course description for the algebra class from the community college
- Online school calendar for the district
- Special Education Provider Handbook for the 2021-22 school year
- Attendance record for the student for the 2021-22 school year
- Record of special education teacher absences for the 2021-22 school year
- Activity log for the student
- First semester grade report for the student for the 2021-22 school year

### Background Information

This investigation involves an 18-year-old boy who is completing his senior year at his local high school. The student receives special education services under the disability category of Autism.

## Issues

In his complaint, the parent outlined eleven areas of concern. Nine of those concerns relate to the implementation of the student's April 14, 2021 and/or October 20, 2021 IEPs. Eight of these issues address allegations that the district failed to provide the accommodations specified in these IEPs and will be addressed in Section One of this report. The ninth issue related to IEP implementation focuses on the provision of special education services specified in the student's IEPs. That issue will be addressed in Section Two of this report. The two remaining issues – which center on topics other than IEP implementation – will be addressed separately in Section Three and Section Four of the report.

### Section One – Failure to Provide IEP-Specified Accommodations/Modifications

(Issues 1-5 and 9-11)

#### 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.

#### Issue One

The student's algebra teacher did not email the parents about late assignments at the beginning of the semester.

#### Parent's Position:

The parent asserts that the student had not turned in required coursework within the designated time frame, but the teacher did not timely contact the parents to alert them to the problem.

#### District's Position:

It is the position of the district that the district was not required to provide this accommodation because the student was taking College Algebra as a dual credit class, earning credit at both the high school and the local community college. The district contends that the community college accommodations did not require the teacher to notify the parents that assignments were late.

### Investigative Findings:

The “Supplementary Aids and Services” section of the student’s April 14, 2021 IEP includes the following accommodations to be delivered in the general education setting:

- Extended time (time and a half);
- [the student] will not have spelling counted against him on assignments and assessments where spelling is not being tested;
- arithmetic/periodic tables and formulas provided;
- parents (sic) will need to email parents if assignment is late two days;
- guided notes provided if remote learning occurs; and
- [the student] will be allowed to listen to music using headphones/phone during work time during the fourth quarter with a set criteria.

The parents were provided with prior written notice on April 14, 2021 that “instead of teachers contacting parents one (sic) a week, they will know (sic) email if an assignment is late 2 days.”

The student’s April 14, 2021 IEP includes only one annual goal:

By the end of the IEP period, to increase his ability to complete and turn in assignments on time, [the student] will turn in 100% of his work on time in all core classes (Math English, History, and Science) as recorded in the grade book.

During the fourth quarter of the 2020-21 school year, the student was, according to baseline information in the April 2021 IEP, turning 77% of his assignments in on time. At quarterly monitoring periods following the development of the April 2021 IEP, the student was to increase his level of assignment completion/submission to 82%, then 87%, and 93% until reaching his goal of 100% by the fourth monitoring period.

The first day of school for the 2021-22 school year for the student was August 17, 2021. The student was enrolled for the first semester in a College Algebra class. On August 30, 2021, the algebra teacher sent an email to the student’s parents to let them know that the student had not to date submitted any completed assignment. The student’s mother responded via email on August 31, 2021, thanking the teacher for the heads up and telling her that the parents would have the student complete his assignments that evening. The student’s mother also provided a “good email” address for the student’s father for future reference.

On September 6, 2021, the parent sent an email to the principal stating that the student had informed him that the algebra teacher would no longer be accepting late assignments. In the email, the parent stated that the student's IEP allowed for extended time to turn in assignments and required teachers to notify the parents if assignments were late.

The principal wrote back to the parent on September 7, 2021 stating that the school was investigating whether the algebra class was being taken for high school or college credit. According to the email, if the course was being counted for college credit, then "there is a different protocol for carrying out the IEP." The principal stated that the algebra teacher gave the student "1-2 weeks to complete the missing work. He did not turn in the work after he was given the extended time."

The director of special education sent an email to the student's parents and school staff on September 8, 2021. The director stated

Please let us know if [the student] has registered to take College Algebra with Highland Community College. If he is taking it for college credit as well as high school credit that may affect the IEP. In which case I would agree [with an email from the student's mother] that we need to schedule an IEP meeting...

The parent wrote back to the director on September 8, 2021 stating that he assumed that the course was for college credit "since the class is titled College Algebra, but it seems that [the principal] has indicated [the student] is not on the college roll."

The director responded to the parent on that same date stating "College Algebra is a dual credit concurrent course for Highland Community College meaning it can be taken for high school credit as well as college credit if desired. Students enroll online. I just got my list of enrolled students from Highland late Friday afternoon and [the student] is not on that list. I sent [the student] an email letting him know that the deadline is September 15th."

On September 9, 2021, the principal sent the parent an email stating "as of right now [the student] has not enrolled in College Algebra for college credit...If he stays taking the course as a high school credit then his accommodations will be followed as per his IEP in place..."

On September 14, 2021, the student's IEP team met to discuss – among a number of topics – the student's failure to submit completed homework for his College Algebra class. At the time of the meeting, approval had not been granted by the community

college for the student to take the class for dual credit (high school and the local community college). The parents were given prior written notice that, if dual credit was approved, the accommodations/modifications shown in his April 14, 2021 IEP would no longer be implemented in the algebra class. The parents decided to wait until after the first College Algebra test had been conducted to decide if the student would take the course for community college credit.

A second IEP team meeting was held on September 21, 2021 after the student failed his first College Algebra test. As of the date of the second meeting, the student had not yet applied for dual credit for the algebra class from the community college. The parents were again given prior written notice that if the community college approved dual credit, the accommodations specified in his then current IEP would no longer be provided in the algebra class.

On September 20, 2021, the student's mother sent an email to the director of special education stating

Since our last IEP meeting we have attempted to enroll [the student] [in college credit classes] through the admissions process [but] the personal (sic) at Highland are not seeing his admission and told us that their window has closed and that it was not concrete and they are not sure he can be enrolled at this point. So he is not enrolled. As of right now [College Algebra is] still a high school class...per his IEP should be followed.

[The student] had missing assignments in [algebra] class on 8/24 – I was notified...on 8/30 – which goes against his IEP. [His parents] are both to be notified by the 2<sup>nd</sup> day of missing work...per to help with his time and half and trying to get thing turned in on time.

On September 20, 2021, the principal sent an email to the student's mother stating

I will notify the staff that [the student] will not be taking courses for college credit. This way they can make sure that accommodations are being met for high school purposes. I will make sure all of this is in place before the meeting and try to have a plan for the...classes you have discussed in your emails.

The Dean of Instruction for the community college sent an email on September 28, 2021 to the student's algebra teacher which included academic accommodations for the student. These accommodations included the following:

- extra time on exams and quizzes (1.5 times the regular exam time is allowed);
- distraction reduced testing location;
- instructor notes/PowerPoints, if available, or note taker; and
- permission for the student to remove himself from the classroom as needed.

On September 29, 2021, the dean sent an email to district staff confirming the student's acceptance for dual credit in College Algebra and another class.

An IEP team meeting was held on October 20, 2021. At that meeting, the team revised the student's April 21, 2021 IEP, making changes to (among a number of sections) the "Supplementary Aids and Services" portion of the IEP. The "Supplementary Aids and Services" section of the IEP was amended as follows:

- extended time – teacher will notify parent that the assignment is past due; he will have 24 hours to complete this assignment once he has been informed;
- arithmetic/periodic table and formula provided;
- guided notes if remote learning occurs; and
- spelling not counted against him on assignments and assessments where spelling is not tested.

The parents were provided with prior written notice of the district's proposed changes to the IEP on October 20, 2021. The notice spelled out changes to supplementary aids and services listed above but also included a caveat. According to the notice, the IEP team proposed that these accommodations would not be provided in the student's Advanced Composition class and in College Algebra since both courses were being taken for "dual college credit." The student's mother gave her written consent for the district's proposed changes.

The student earned a grade of "F" for the semester in his College Algebra class with a score of 42%. He had 30 missing assignments for the course. According to the teacher, he received zeros on all missing assignments, and his failure to complete practice problems affected his ability to score well on tests.

### **Conclusions:**

Throughout the first semester of the 2021-22 school year, the student earned credit from the high school for his College Algebra course. The teacher incorrectly assumed that the student had been approved to take her class for dual credit (high school and community college) but approval for credit from the community college was not granted until September 29, 2021. While the student's mother gave written consent for the district to withdraw IEP-based accommodations for the student in his algebra

and Advanced Composition classes as of October 20, 2021, those accommodations should have been provided to the student at the start of the 2021-22 school year. However, the teacher did not notify the parents of the student's late assignments as required by the student's April 14, 2021 IEP. A violation of special education statutes and regulations is substantiated on this issue.

#### Issue Two:

The College Algebra teacher did not provide accommodations specified in the student's IEP.

#### Parent's Position:

The parent states that the Algebra teacher refused to accept late assignments from the student and did not allow extra time for the student to complete the first test of the semester. The parent asserts that after being informed of the accommodations in the student's IEP, the teacher addressed the parent's concern by deleting previously assigned grades, an action which the parent contends limited the parents' ability to judge the student's progress in the class. It is the parent's position that this action resulted in the student failing the class.

#### District's Position:

The algebra teacher states that she is unsure whether or not she allowed the student extra time to complete the first test of the year, but the district stipulates that the College Algebra teacher did not allow "extra time" as required by the student's April 14, 2021 IEP.

#### Investigative Findings:

The April 14, 2021 IEP required that the teacher notify the parents if an assignment is two days late. The IEP also stated that the student was to be given "extended time" but does not specify whether this accommodation was to be provided for tests, assignments, or both, though the parents believe that the accommodation applied to both tests and assignments. The IEP does not require teachers to accept assignments that are submitted after the "time and a half" extension.

As established in Issue One, the algebra teacher believed that the student was, from the beginning of the school year, taking her course for dual credit from the community college and felt she was not required to implement any of the accommodations specified in the student's April 2021 IEP.

After an IEP team meeting on September 14, 2021, the teacher told the parents that grades from previously late assignments would not count against the student, but no evidence was presented by the district to show that the teacher provided the parents with notice when the student continued to be late in turning in assignments.

As noted above under Issue One, the parents were given prior written notice on September 14 and 21, 2021 that if the student was approved for dual credit for the College Algebra class, then the accommodations specified in the student's April 2021 IEP would no longer be available in the class. The community college provided the algebra teacher with a list of accommodations for the student on September 28, 2021, one day before the community college confirmed the student's dual credit enrollment in the class. The accommodations specified in the community college plan for the student allowed extra time but did not require the teacher to notify parents when assignments were late. Following an IEP team meeting on October 20, 2021, the student's mother gave written permission for the district to withhold IEP-based accommodations/ modifications during the student's algebra and Advanced Composition classes.

**Conclusions:** No evidence was provided by the district to show that the algebra teacher allowed the student extra time as specified in his April 14, 2021 IEP to complete assignments or extended time to complete his first test. A violation of special education statutes and regulations is substantiated on this aspect of this issue. However, the student's April 2021 IEP does not compel the teacher to accept any assignment turned in after the time and a half extension period. Therefore, a violation of special education statutes is not substantiated on this aspect of this issue.

### **Issue Three:**

The Chemistry teacher did not email the parents about the student's late work at the beginning of the first semester or at the beginning of the second semester.

#### **Parent's Position:**

It is the position of the parent that the Chemistry teacher failed to notify the parents when the student had not turned in assignments on time.

#### **District's Position:**

The district stipulates that the Chemistry teacher did not in a timely fashion notify the parents when the student was late turning in his assignments.

#### **Investigative Findings:**

The student has been enrolled in Chemistry since the start of the 2021-22 school year.

As noted above under Issue One, the student's parents were to be notified when the student failed to submit an assignment on time.

In an email to the director of special education dated September 20, 2021, the student's mother wrote

[His parents] are both to be notified by the 2<sup>nd</sup> day of missing work...per to help with his time and half and trying to get thing turned in on time. [This accommodation wasn't] followed by [the student's Chemistry teacher]. I have not heard from [that teacher]. I believe his first missing assignment was on 9/7. He has 6 missing assignments.

It is the policy of the student's Chemistry teacher to accept late work at any time during the school year and to offer students the opportunity to retake some assignments for a better grade. However, the teacher did not contact the parents in the manner specified in the student's April and October 2021 IEPs to let them know that assignments were late.

The student earned a first semester grade of D- in Chemistry. His current grade in Chemistry is B-.

**Conclusion:** Because the Chemistry teacher did not notify the parents when assignments were past due as required by both the student's April and October 2021 IEPs, a violation of special education statutes and regulations is substantiated on this issue.

#### **Issue Four:**

The Robotics teacher did not email the parents about the student's late work at the beginning of the first semester.

#### **Parent's Position:**

The parent asserts that the Robotics teacher (who is also the student's Chemistry teacher) failed to inform the parents when the student was late turning in assignments. The parent further contends that the teacher eliminated Robotics assignments and instead allowed the student to work on his Chemistry assignments during Robotics class.

#### **District's Position:**

The student was enrolled in a Robotics class for the first semester of the 2021-22 school year.

The district stipulates that the Robotics teacher did not inform the parents about missing or late work at the beginning of the first semester of the 2021-22 school year.

**Investigative Findings and Conclusions:** The student earned a grade of A- in his Robotics class for the first semester. As noted above under Issue Three, it is the practice of the Chemistry/Robotics teacher to accept late assignments at any time. While late assignments did not appear to negatively impact the student's semester grade in his Robotics class, the district stipulates that the teacher did not contact the parents whenever assignments had not been submitted by the original due date. A violation of special education statutes and regulations is substantiated on this issue.

#### **Issue Five:**

The Economics teacher did not email the parents about the student's late work at the beginning of the first semester.

#### **Parent's Position:**

The parent asserts that the Economics teacher failed to inform the parents about the student's late assignments until after a team meeting in September 2021.

#### **District's Position**

The district stipulates that the Economics teacher did not contact the parents at the start of the 2021-22 school year to inform them of the student's late assignments.

#### **Investigative Findings:**

The student was enrolled in Economics for the first semester of the 2021-22 school year.

According to the district, the Economics teacher will accept late assignments at any time prior to the last day of class. While the teacher was aware that the student had an IEP, it was not until after the start of the second semester that he was informed that he should be notifying parents whenever an assignment was not submitted by the original due date.

The Economics teacher states that "almost all of [the student's] missing points came from assignments that were never turned in...I did talk to [the student's] guardians at parent teacher conference and did share with them that [the student] had expressed

that his only goal is to do enough to pass and that he had several [assignments] that were never turned in.”

The student earned a first semester grade of D+ in his Economics class.

**Conclusions:**

Because the Economics teacher failed to timely notify the student’s parents when assignments were late as required by the student’s April and October 2021 IEPs, a violation of special education statutes and regulations is substantiated on this issue.

**Issue Nine:**

The Chemistry teacher did not email parents about late work at the beginning of the second semester.

As noted above under Issue Three, the district stipulates that the Chemistry teacher has not informed the parents when the student failed to submit assignments on time. A violation of special education statutes and regulations is substantiated on this issue.

**Issue Ten:**

The Computer Programming teacher did not email the parents about the student’s late work at the beginning of the second semester.

**Parent’s Position:**

The parent asserts that the Computer Programming teacher stated that he would not be following the student’s IEP and “did not have time to babysit” the student.

**District’s Position:**

The district stipulates that the Computer Programming teacher did not notify the parents when the student was late turning in assignments.

**Investigative Findings and Conclusions:**

The student has been enrolled in the Computer Programming class since the start of the second semester of the 2021-22 school year.

Although neither party provided any specific facts regarding this allegation, the district has stipulated that the Computer Programming teacher did not notify the parents when the student failed to turn in his assignments on time. Under these circumstances, a violation of special education statutes and regulations is substantiated on this issue.

### Issue Eleven:

The College Algebra teacher did not provide notes or reduce the number of problems for the student at the beginning of the first semester.

### Parent's Position:

The parent contends that the algebra teacher refused to "abide by the IEP."

### District's Position:

The district stipulates that the algebra teacher did not allow for modification of the student's math assignments because the student was taking the class for dual credit (high school and community college).

### Investigative Findings:

As noted above, under Issue One, the student's April 14, 2021 IEP included – among others – the following accommodation:

guided notes provided *if remote learning occurs* (emphasis added)

At no time during the 2021-22 school year has the district moved to a remote learning model.

The student's April 2021 IEP does not specifically require a reduction in the number of problems the student is to complete. The section of the student's April 14, 2021 IEP entitled "Program Modifications and Supports for School Personnel" contains the following statement: "Modified Math Assignments with modifications approved by the SPED teacher." No evidence was presented by either side to show that the special education teacher had approved any modifications to the student's math assignments.

On October 20, 2021, the district provided the parents with prior written notice of the district's proposal that the student "no longer [have] shortened assignments in math [because the student] is taking College Algebra for a dual credit." The student's mother gave her written consent for this change.

### Conclusions:

The student's April 14, 2021 IEP did not require the district to provide guided notes unless the district moved the student to a remote learning model. At no time during the 2021-22 school year has the district moved to a remote learning model. Therefore, the district was not required to provide the student with guided notes. A violation of

special education statutes and regulations is not substantiated with regard to this aspect of this issue.

While the student's April 14, 2021 IEP did not specifically require the district to reduce the number of problems the student was required to complete in his algebra class, the IEP did call for "modified math assignments." The district provided the parents with prior written notice on October 20, 2021 that the student would no longer have shortened assignments in math which leads to the reasonable assumption that the modification was required up until that point. The district stipulates that no accommodations or modifications were provided by the College Algebra teacher. A violation of special education statutes and regulations is substantiated on this aspect of this issue.

## Section Two – Failure to Provide Special Education Services

(Issue 6)

### Applicable Statutes and Regulations:

As indicated above under Section One of this report, 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.

### Issue Six:

The student was not assigned a special education instructor when his primary instructor was absent from school for two weeks.

### Parent's Position:

The parent contends that the special education teacher was absent from work for a period of two weeks. According to the parent, the student reported to him that no one had been assigned to assist the student during the teacher's absence.

### District's Position:

It is the position of the district that the provision of special education services to the student was unaffected by the absence of the special education teacher.

### Investigative Findings:

The "Special Education Services" section of the student's April 14, 2021 IEP states that the student was to begin the 2021-22 school year with the following services:

- 10 minutes of special education services in a special education setting 5 times each week for a "check in;"
- 48 minutes of special education support from a paraeducator for 5 days each week in the general education math class; and
- 20 minutes of service each week from a social worker.

The student's IEP was revised on October 20, 2021. According to the new IEP, the student was to receive the following services:

- 28 minutes of special education support in a resource room for 4 days each week for AEP (Academic Enrichment Period), and
- 20 minutes of social work services per week.

On September 6, 2021, the parent sent an email to the building principal. In that email, the parent stated that he had heard that the student's special education teacher was "going to be away from school for an extended time period." The parent asked who the student would be assigned to during the teacher's time away from school.

The student's mother sent an email to district staff on September 7, 2021 asking whether another teacher had been assigned to assist the student while the special education teacher was absent.

Records provided by the district show that the student's special education teacher has been absent for a total of 9.75 days since the start of the 2021-22 school year. The teacher was absent two days in August 2021, five and a quarter days in September 2021, one day in October 2021, and one and a half days in January 2022. Records provided by the district show that substitute coverage was provided on all of these dates.

A daily log regarding the student's assignments and his check-ins was provided by the district. The log shows both morning and afternoon check-in times for the student. According to the log, the student completed his check-in on all days when the special education teacher was absent.

### Conclusions:

Substitute coverage for the student's special education teacher was provided on all of the dates during the 2021-22 school year when the teacher was absent. Additionally, records provided by the district show that the student has consistently been provided with check-in opportunities even when the teacher was absent. A violation of special education statutes and regulations is not substantiated on this issue.

### Section Three – IEP Review by General Education Teachers

(Issue 7)

#### Applicable Statutes and Regulations:

Once an IEP has been completed and consent for services has been obtained from the parents, the child's IEP must be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Regardless of whether an individual participates in the IEP meeting, all individuals who are providing education to the child (regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementation of the IEP) must be informed by the IEP team of

1. his or her specific responsibilities related to implementing the child's IEP, and
2. the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP (K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2)).

#### Issue Seven:

Teachers are not reviewing IEPs.

#### Parent's Position:

According to the parent, several of the student's teachers reported during parent teacher conferences that they were unaware of what was contained in the student's IEP.

#### District's Position:

The district stipulates that general education teachers were not timely informed of their responsibilities related to the implementation of the student's IEP.

#### Investigative Findings:

According to the director of special education, service providers are to meet early in the school year with the general education teachers of all students on their caseloads

to inform the teachers that students are being served under an IEP. The service providers are to discuss the general education teacher's responsibility with regard to individual students and to review applicable accommodations and/or modifications. The service providers are to ensure that the general education teachers know how to access the IEPs of their students and are required to have general education teachers sign off to show that they have been given the information they need.

Two of the student's teachers reported that they were aware that the student had been served under an IEP for several years but were unaware of the provisions of the student's current IEP.

While, according to the director, the case manager did meet with the student's general education teachers, it appears that some if not all of those meeting took place in mid-October 2021 at the earliest. Even though IEP team meetings regarding the student were held in September of 2021, the student's Chemistry/Robotics teacher, for example, reported that he did not understand his responsibility to inform the parents of late assignments until after the start of the second semester of the 2021-22 school year. The director states that no procedures are currently in place in the district to verify when special education service providers share information with general education teachers.

### **Conclusions:**

District procedures regarding the sharing of IEP-related responsibilities with the student's general education teachers were not followed. The student's general education teachers were not informed in a timely manner about their responsibilities regarding the provision of accommodations at the beginning of the 2021-22 school year, and the majority did not have a clear understanding of how to implement those accommodations. At least one general education teacher acknowledged that he was unclear about how accommodations were to be implemented well into the second semester. Because the district failed to ensure that general education teachers were informed of their specific responsibilities regarding the student's IEP, a violation of special education statutes and regulations is substantiated on this issue.

## **Section Four – Provision of Parent Rights**

(Issue 8)

### **Applicable Statutes and Regulations:**

The revision of IDEA (Individuals with Disabilities Education Act) in 2004 eliminated the requirement to provide a copy of Parents Rights Notice with the notification of each IEP meeting. Schools are required to provide a copy of the notice

- at least one time in a school year; and
- upon a referral or a parent request for initial evaluation; or
- first formal complaint or due process complaint filed in a school year; or
- upon a disciplinary removal from school that constitutes a change in placement; and
- upon parent request (34 C.F.R. 300.504).

#### Issue Eight:

The district failed to provide the parents with a copy of their parent rights at an emergency IEP meeting.

#### Parent's Position:

The parent contends that he and the student's mother were not given a copy of their parent rights at an IEP meeting on September 22, 2021. The parent does not assert that the district refused to provide a copy of parent rights upon his request but stated that the director of special education who attended the meeting should have known that the document should have been provided.

#### District's Position:

It is the position of the district that the special education teacher followed established district procedures and provided parents with a copy of their parent rights at the student's annual IEP team meeting in October 2021.

#### Investigative Findings:

On pages 3-5, the district's special education procedures and policies handbook addresses "Parent Rights/Procedural Safeguards." The handbook states

A copy of the Parent Rights in Special Education Notice must be provided to both parents and in the native language of the parents/adult student or other mode of communication used by the parent/adult student.

On September 7, 2021, the student's mother sent an email to district staff in which she stated that an "emergency IEP meeting may need to be scheduled" to address concerns regarding the implementation of the student's IEP. The meeting was held on September 14, 2021.

Following the meeting, the parents were mailed a copy of a form entitled "Prior Written Notice for Identification, Initial Services, Placement, Change of Services, Change of Placement, and Request for Consent." Page 3 of that document contains a section entitled "Procedural Safeguards to Protect Parent's Rights." That section reads as follows:

Both state and federal laws concerning the education of children with exceptionalities include many parental rights. Receiving notices of action the school wants to take in regard to your child and being a part of your child's educational planning team are examples of the rights the laws give you. These laws also require that the school follows certain procedures to make sure you know your rights and have an opportunity to exercise those rights. The school is required to give you a copy of the rights of a parent at least one time each school year. To receive an additional copy of your rights and procedural safeguards available to you, and if you have any questions regarding your rights, you may contact the special education director of the school or special education cooperative.

Another IEP team meeting was held on September 22, 2021. Following that meeting, the parents were again provided with prior written notice of actions proposed by the district. As previously described, the notice form contained information regarding procedural safeguards to protect parent rights.

The student's IEP was reviewed and revised on October 20, 2021. According to the section of the IEP entitled, "Provide to Parent," the parent was provided with a copy of parent rights on October 20, 2021. The parent provided written confirmation of receipt of procedural safeguards on October 21, 2021.

**Conclusions:**

Special education statutes and regulations do not require districts to provide parents with a copy of parent rights at every meeting related to the student. IEP team meetings in September 2021 were held for the purpose of addressing concerns regarding the implementation of the student's IEP, not to discuss disciplinary removal, a formal complaint, or a due process hearing. The parent does not contend that the district refused a request from either parent for a copy of parent rights. Parent rights were presented to the parents at the annual IEP review meeting on October 20, 2021. A violation of special education statutes and regulations is not substantiated on this issue.

## Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, violations occurred 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; and
- 34 C.F.R. 300.323(d)(2) which requires that general education teachers be informed about their responsibilities regarding the implementation of IEPs.

Therefore, USD #364 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 his October 20, 2021 IEP unless or until those accommodations are amended or deleted by the student's IEP team; and
  - 34 C.F.R. 300.323(d)(2) by ensuring that general education teachers are fully informed of their responsibilities regarding the implementation of the IEPs of this student and other special education students in the student's building of attendance.
- 2) Submit to SETS for approval, by no later than April 1, 2022, a plan to address issues raised in this complaint. That plan shall include:
  - a. A schedule for training of all general education teachers regarding their legal responsibilities regarding the implementation of accommodations specified in the IEPs of special education students in their classrooms.
  - b. The development of a policy which includes strategies for documenting that general education teachers have been informed of the accommodations/modifications required by the IEPs of each of the special education students in their classrooms by no later than the end of the first full week of any given

school year and/or no later than the first full week after any change in a student's class schedule.

- c. The policy specified above under Corrective Action 2b shall include the establishment of deadlines for reporting by special education staff to the director of special education confirming that general education teachers have been informed of their responsibilities regarding the implementation of accommodations for all special education students in the building.
- 3) Submit to SETS, by no later than June 1, 2022, a summative report regarding the implementation of IEP accommodations for the student identified in this complaint. The summary shall include:
    - a. Verification that all applicable general education staff members have received training regarding their responsibilities for the implementation of the student's IEP accommodations and have a clear understanding of how and when parents will be notified if assignments have not been submitted on time and of how the extended time accommodation is to be operationalized; and
    - b. Evidence to show that accommodations specified in the student's October 20, 2021 IEP (or any revisions to that IEP completed during the remainder of the 2021-22 school year) have been implemented.
  - 4) Submit to SETS by no later than April 1, 2022, a plan for the provision of compensatory services for the student to address the district's failure to provide notice to the student's parents when he failed to submit assignments on time. The plan shall:
    - a. Provide the opportunity for the student to improve his grades in his College Algebra, Economics, and Chemistry classes by submitting any or all late assignments and retaking tests by no later than July 1, 2022. All submitted assignments shall be graded without any consequence for the date of submission.
    - b. If requested by the student, provide – at no cost to the family – tutoring in each of these subjects – either by district staff or through a private agency. Twenty minutes of tutoring will be allowed for every missed assignment.

If the student opts to participate in tutoring sessions, the student and the district will develop a schedule for tutoring sessions, which may be combined for the convenience of the parties. If the student misses more than three scheduled sessions, the remaining sessions will be cancelled. The student or his parents are to be reimbursed at the state approved rate for mileage to and from the tutoring site.

The student will have the option of accepting all or part of the compensatory services or of rejecting the services in their entirety. The student must inform the district no later than May 1, 2022 as to what portion, if any, of the compensatory services he plans to accept.

- 5) By no later than May 15, 2022, the district shall inform SETS of the student's decision regarding the compensatory services specified above in Corrective Action 4.

Further, USD #364 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:

- 1) a statement verifying acceptance of the corrective action or actions specified in this report;
- 2) 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
- 3) 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 in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212. That notice of appeal must be delivered to Special Education and Title Services, designee of the State Commissioner of Education, 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 is attached to this report.

*Diana Durkin*

Diana Durkin, Complaint Investigator

(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)