

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #253
ON MARCH 28, 2022

DATE OF REPORT: APRIL 25, 2022

This report is in response to a complaint filed with our office by _____ on behalf of her son, _____. For the remainder of this report, ____ will be referred to as “the student.” Ms. _____ will be referred to as “the parent.”

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on April 6, 2022. On April 4, 2022, the investigator spoke via telephone with Tara Glades, Director of the Flint Hills Special Education Cooperative.

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

- IEP for the student dated March 2, 2021
- Notice of Meeting dated January 31, 2022
- Draft IEP for the student dated February 24, 2022
- Team Meeting Record dated February 4, 2022
- IEP for the student dated March 1, 2022
- Team Meeting Record dated March 1, 2022
- Team Meeting Record dated March 1, 2022 containing both district-developed and parent-developed notes
- Email dated March 2, 2022 from the school psychologist to the parent
- Email exchange dated March 2, 2022 between the parent and the school psychologist
- Email dated March 3, 2022 from the parent to the school psychologist
- Email dated March 4, 2022 from the school psychologist to the parent
- Email dated March 11, 2022 from the parent to the school psychologist
- Email dated March 21, 2022 from the parent to the school psychologist

- Email dated March 23, 2022 from the parent to the school psychologist
- Email dated March 28, 2022 from the school psychologist to the parent
- Email dated March 29, 2022 from the parent to the school psychologist
- Email dated April 1, 2022 from the school psychologist to the parent
- Online Academic Calendar for the district for the 2021-22 school year

Background Information

This investigation involves an 11-year-old boy who is enrolled in the 5th grade in his neighborhood school. The student was first determined to be eligible for special education services in February of 2021 under the category of Specific Learning Disabilities.

At the time of the investigation of this complaint, the parent has requested an independent educational evaluation (IEE) for the student. The parties are also pursuing mediation regarding issues outside of those presented in this complaint.

Issues

In her complaint, the parent identified three concerns. The district provided the Kansas State Department of Education (KSDE) with a proposed resolution to the first issue, and that proposal was accepted.

This investigation will focus on the two remaining issues.

Issue Two: The district failed to provide the parent with prior written notice of its proposal to change the special education services being provided to the student.

Applicable Statutes and Regulations

The parent of an exceptional child shall have the right to written prior notice whenever a district proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child (K.S.A. 72-3430). If the district proposes to make a material change in services (25% or more of the frequency or duration of any one service), the parent must agree in writing to that change. Similarly, if the district proposes a substantial change in placement (more than 25% of the child's school day), that change cannot be made without the written consent of the parent (K.A.R. 91-40-27(a)(3)).

The Kansas State Department of Education has determined that in situations where a school district is required to provide parents with a written notice of the district's proposal or the district's refusal of a parent's proposal, a reasonable time in which to provide such notice to the parents is 15 school days, unless there is some unusual circumstance (Letter to Directors by Passman, January 8, 2002).

Parent's Position

The parent asserts that prior to the filing of this complaint, the district failed to provide her with prior written notice of a proposal to decrease and/or remove special education services to the student.

District's Position

The district states that it was coincidental that the parent was provided with prior written notice regarding changes to the student's IEP on the same day that the parent filed this complaint. According to the district, a draft IEP was sent to the parent on March 2, 2022. The district asserts that it actively sought input from the parent regarding changes reflected in the draft. The district contends that the draft IEP was – according to the parent – being reviewed by someone outside the district, and the parent was waiting for that review to be completed before providing the district with feedback. On March 28, 2022, having received no communication from the parent regarding changes to the IEP, the district states that it provided the parent with prior written notice regarding proposed changes to the document.

Investigative Findings

The student's initial IEP was completed on March 2, 2021. According to that IEP, the student was to start the 2021-22 school year with the following services:

- 20 minutes 5 times per week of direct instruction in writing structure and spelling in a resource room setting;
- 20 minutes 5 times per week of general education support for literacy;
- 20 minutes 5 times per week of general education support for writing;
- 20 minutes once a week of therapy with a speech/language pathologist;
- 20 minutes once a week of Occupational Therapy (OT); and
- collaboration time once every four weeks between the OT, speech/language pathologist, and special education teacher.

On February 24, 2022 an IEP Team meeting was held for the purpose of conducting an annual review of the student's IEP. All required participants attended the meeting including the parent who participated virtually.

At the meeting, the district proposed a draft IEP which reflected a change in special education services and placement for the student, dropping all direct instruction in writing and spelling as well as all support in the general education setting and reducing the student's resource room support to one check-in session a week for 15 minutes. Speech/ language and OT services would continue at the same level as they were in the March 2, 2021 IEP.

The parent disagreed with the district and requested that a second meeting be held so that the student could share his thoughts and feelings regarding a reduction in his special education services.

The follow-up meeting was held on March 1, 2022. The student attended the meeting in person; the parent participated virtually. The team discussed continuing the student's special education support through the resource room through the end of the 2021-22 school year but at a reduced level. There was additional discussion about goals and accommodations. The parent was to let the school know if she wanted to hold another meeting for further discussion, and the school psychologist was to send paperwork home for the parent's review.

Based on the IEP Team discussion on March 1, 2022, the district amended the draft IEP to include 15 minutes of special education support for 3 days per week in the area of writing through the end of the 2021-22 school year. These services would decrease to one time per week beginning at the start of the 2022-23 school year. The draft did not include any general education support for the student. Speech/language and OT services remained unchanged.

The "updated DRAFT IEP" was sent to the parent by the school psychologist on March 2, 2022 with instructions to "reply all" with questions and/or to accept the IEP with changes.

The parent states she was surprised by the significant reduction in the number of minutes the student would be served in the resource room. The parent was, by her report, "shocked" to see that the student's in-class supports had been removed because that change had not been discussed by the team during either the February

24 or March 1, 2022 IEP Team meeting. The district acknowledges that the team did not discuss this reduction at either the February 24 or March 1, 2022 meeting.

On March 3, 2022, the parent responded via email to the school psychologist stating that she had received the "second draft" of the student's IEP but had not received prior written notice for the "following material changes in service which were discussed in the 3.1.22 meeting and are reflected in the proposed draft." The parent listed the following changes:

- 1) The reduction in [the student's] specialized instruction within the resource room from 20 minutes 5 days a week (100 minutes/wk) down to 15 minutes 3 days a week (45 minutes/wk) for the duration of the 2021-22 school year;
- 2) The reduction from 15 minutes 3 times a week to one 15 minute check-in per week for the remainder of the IEP year – which is essentially the removal of any "specialized instruction" in writing from his IEP; and
- 3) The removal of [the student's] 20 minutes 5 days a week of in class literacy support and 20 minutes 5 days a week of in class writing support.

According to the parent, "both numbers one and two above fall into the category of a material change in the frequency or duration of any one service, while number 3 above fall into the category which requires consent to delete a service (KAR 91-40-27(a)(3))."

In the March 3, 2022 email, the parent also stated that she was having the IEP reviewed by an independent reviewer and would contact the district with further questions.

On March 4, 2022, the school psychologist sent an email to the parent explaining that the district was waiting to hear whether the parent accepted the revised IEP changes before sending prior written notice regarding those changes.

On March 11, 2022, the school psychologist emailed the parent to see if she had questions about the proposed changes.

There was no school in the district from March 14 through March 18, 2022 because of Spring Break.

The parent responded to the school psychologist's March 11, 2022 email on March 21, 2022 stating "I received this email, but am still waiting to hear back on some final details from the independent review. I will get back to you as soon as I can."

In her message, the parent outlined “a few compliance issues” which she felt “must be addressed before moving forward.” Among other topics, the parent stated

I have yet to be provided PWN after the team’s proposal to remove all in-class supports and significantly decrease his service minutes in direct instruction in writing/spelling within the resource room. (See K.A.R. 91-40-27(a); 34 C.F.R. 300.300).

At 9:57 AM on March 28, 2022 (14 school days after the March 2, 2022 team meeting), the school psychologist sent an email to the IEP team stating that she would be sending out the “Team Meeting Record” for “everyone who attended the meetings to sign” as well as the prior written notice for the parent’s signature.

The district received notice from the parent at 12:44 PM on March 28, 2022 that she had filed a formal complaint.

The parent reports that she received the DocuSign documents at 3:45 PM on March 28, 2022. On March 29, 2022, the parent replied to the school psychologist via email, outlining a number of concerns she had with statements included in the prior written notice form. Additionally, the parent requested that the district provide her with documents, data, and other information. In closing, the parent wrote

...I do not give consent for the special education placement and services action(s) specified in this notice for my child.

On March 28, 2022, the parent signed the prior written notice form indicating that she did not consent to the district’s proposed changes. The parent returned a scanned copy of the form to the district as an attachment to an email to the school psychologist on March 29, 2022. In an email dated April 1, 2022, the school psychologist acknowledged receipt of a “scanned...signed copy of the PWN.”

The district has made no changes to the services that were in place for the student. He continues to receive all of the services specified in his March 2, 2021 IEP.

Summary and Conclusions

Two meetings were conducted related to the annual review of the student’s March 2, 2021 IEP, the first on February 24, 2022 and the second on March 1, 2022. Changes to the student’s special education services were discussed during both meetings. The

district revised the special education services listed in the initial draft IEP which had been sent to the parent prior to the February 24, 2022. A second draft document, was sent to the parent for her review on March 2, 2022.

The parent sent an email to the school psychologist for the district on March 21, 2022 stating that the revised draft was – at the request of the parent –being reviewed by someone outside of the district. The parent stated that she was waiting to hear from the reviewer before following up with the district.

When, by March 28, 2022 (14 school days after the second IEP team meeting on March 1, 2022), the parent had neither accepted the district's draft without changes nor offered feedback on additional revisions, the district moved ahead to provide prior written notice of changes to placement and services as they were outlined in the March 2, 2022 draft. While the parent did not receive the prior written notice document until after she had submitted her complaint, the district provided evidence to show that the decision to present prior written notice had been made independent of the filing of the complaint, and the timing was purely coincidental.

The parent did not consent to the district's proposed changes, and the student continues to receive special education and related services in the manner described in his March 2, 2021 IEP.

The district did – within a reasonable time – provide the parent with prior written notice of its proposal to change the special education and related services for the student. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Three: The district failed to allow the meaningful participation of the parent in the student's annual review meeting.

Applicable Statutes and Regulations

Districts must take steps to ensure that one or both of a child's parents are present at each IEP meeting or are afforded the opportunity to participate (K.A.R. 91-40-17(a)). In addition to participating in meetings, parents must be given the opportunity to inspect and review all education records concerning the identification, evaluation or educational placement of the child and the provision of FAPE (free appropriate public education). (See K.A.R. 91-40-25.)

School districts are not required to take meeting notes, but some do. If notes are taken, parents may ask to have the notes read aloud before ending the meeting.

Parents have the right to request that their child's education records be changed if they believe something is inaccurate, misleading or in violation of the student's rights of privacy (34 C.F.R. 300.618).

Parent's Position

The parent asserts that because meeting notes were not read aloud during the student's February and March IEP meetings, her input was not adequately incorporated into the record. She further contends that it was not until after she had received a copy of the district's proposed IEP for the student on March 2, 2022 that she she was provided a copy of the meeting minutes taken by district staff.

District's Position

It is the position of the district that the parent has actively participated in the annual review of the student's IEP. The district contends that parent's input was considered and requests were promptly addressed by the team.

Investigative Findings

According to the director of the cooperative, it is the practice of the district to develop meeting notes at IEP Team meetings for the purpose of documenting "high points" or important topics discussed during the meeting and to document that required members of the IEP Team were present. The director states that it is typical practice for the parents to be asked whether they would like to have the notes read aloud at the end of the meeting. There is no record of the parent having asked for the notes to be read aloud at the end of either the February 24 or March 1, 2022 meeting and no record of the district having offered to do so.

On March 2, 2022, the school psychologist sent an email to the parent. Attached was a revised draft IEP that included changes made to an earlier draft which had been sent to the parent prior to the February 24, 2022 annual IEP review meeting.

At 4:09 PM on March 2, 2022, the parent sent an email to the school psychologist requesting copies of the meeting records (minutes) for the February 24 and March 1, 2022 IEP Team meetings. The meeting records were sent to the parent at 4:23 PM on March 2, 2022.

On March 23, 2022, the parent sent an email to the school psychologist stating

Thank you and the team for meeting with me on Tuesday, March 1, 2022, to discuss the draft IEP initially proposed on Thursday, February 24, 2022. Much information was tossed around during both meetings, so want to make sure that we have a complete record between the team meeting notes provided to me on Wednesday, March 2, 2022 and what you find below.

The parent included in her March 23, 2022 email summaries she had generated regarding both meetings. Additionally the parent listed “a few compliance issues [that] must be addressed before moving forward.” Among other issues raised by the parent, she noted

...the team meeting notes were not reviewed during the meeting and I was not provided a copy to amend and/or sign until I requested one, after receiving the proposed IEP via email, on 3.2.22.

At 9:57 AM on March 28, 2022, the school psychologist sent an email to the IEP team stating that she would be sending out the “Team Meeting Record” for “everyone who attended the meetings to sign” as well as the prior written notice for the parent’s signature.

The parent responded via email on March 29, 2022 stating that she would not be signing either the February 24 or March 1, 2022 meeting notes because they did not accurately reflect the meeting based upon the notes she herself had taken. The parent requested that the meeting notes which she had provided to the district on March 23, 2022 “be included in [the student’s] permanent educational record.”

The district complied with the parent’s request. On April 1, 2022, the school psychologist copied and pasted the parent’s notes into the Team Meeting Record for each of the meetings and forwarded the amended document to team members for their signatures.

Summary and Conclusions

The parent participated virtually in two team meetings regarding the annual review of the student’s IEP. Special education statutes and regulations do not require either the development of IEP Team meeting minutes or the reading of those minutes if taken. While there is no record to show that the minutes of the two meetings were read

aloud at the conclusion of either of the meetings (contrary to the district's practice), no evidence was provided to show that the district refused a request from the parent that the minutes be read.

The district provided the parent with written copies of the minutes on the same day the parent requested them and within one day of the second meeting. The parent then asserted that the meeting minutes developed by the district did not accurately reflect the team discussion and requested that meeting notes she had developed be included in the student education record. Within three days of the parent's request, the school psychologist amended the record to include both the district's meeting minutes and those developed by the parent.

No evidence was provided to show that the parent's participation in either of two meetings related to the student's IEP was limited in any way because minutes of those meetings taken by district staff were not read aloud. There is no record of the parent making a request for the minutes to be read aloud and no statutory requirement for that action. The district responded promptly to the parent's request for copies of the meeting minutes and to her request that the student's education record be amended to include meeting minutes taken by the parent. 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 not substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Therefore, no corrective actions are required.

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)