

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #349

ON APRIL 12, 2022

DATE OF REPORT MAY 12, 2022

This report is in response to a complaint filed with our office on behalf of _____ by her previous special education teacher, _____. In the remainder of the report, _____ will be referred to as “the student.” _____’s father is _____ and in the remainder of this report he will be referred to as “the father.” _____ will be referred to as the “complainant” in the remainder of the report.

The complaint is against USD #349 (Stafford Public Schools) who contracts with the South Central Kansas Special Education Cooperative (SCKSEC) to provide special education and related services to students enrolled in USD #349. In the remainder of the report, “USD #349,” the “school,” the “district” or the “local education agency (LEA)” shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on April 12, 2022 and the 30-day timeline ends on May 12, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the complainant by telephone on April 13, 2022 and the father on April 28, 2022.

Dr. Bob Diepenbrock, Director of SCKSEC was interviewed on April 19, 2022 and Mrs. Kim Ghumm, Principal, Stafford Elementary School, USD# 349 was interviewed on April 26, 2022.

The Complaint Investigator also exchanged emails with the #USD 349 staff between April 1, 2022 and April 28, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the LEA and the complainant. The following materials were used as the basis of the findings and conclusions of the investigation:

- Programs and Services Guide SCKSEC, May 2020
- SCKSEC Meeting Notes, dated November 19, 2021
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Changes in Service, Changes in Placement, Request for Consent, dated November 19, 2021
- Individualized Education Plan (IEP), dated November 22, 2021
- AIMSWebPlus Student Profile for School Year 2021-2022, Fall and Winter scores

Background Information

This investigation involves a 7-year-old female student who is currently enrolled as a second grader at Stafford Central Elementary School in USD #349. She lives with her father and two brothers.

The student attended first grade in USD # 268 and did not receive any special education or related services. She enrolled in USD #349 at the beginning of second grade and her performance on the AIMSWebPlus reading and mathematics screening assessment revealed low scores in all areas. As a result, she was referred to the Student of Concern Process (SOC) for an initial evaluation and was determined to be a child with a disability in need of special education and related services. She was found eligible as a child with developmental delays on November 19, 2021. Her IEP team then met, and an IEP was developed and in effect on November 22, 2021.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of

noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

ISSUE ONE: The USD #349, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide accommodations specified in the student's IEP during the past twelve months, specifically the text to speech accommodation during the winter administration of the AIMSWebPlus.

Positions of the Parties

The complainant alleged that the student was denied use of her "text read aloud via human or electronic reader" accommodation when taking the AIMSWebPlus during the winter testing session thereby reducing her test scores and not following her IEP for using the text reading accommodation.

The district responded that she did use her "text read aloud via human or electronic reader" accommodation on all AIMSWebPlus subtests for which the accommodation would not invalidate the test scores; however, this accommodation was not provided on the reading fluency subtest because that accommodation would invalidate the subtest score. USD #349 reported that the test administrator used the accommodations listed in all students' IEPs to set the computer-driven accommodations and the selected accommodations were automatically delivered when each student logged on to take the AIMSWebPlus. USD #349 indicated that the student did not use the text read aloud accommodation during the fall administration of the AIMSWebPlus because she was not yet identified as a student with special education needs and no IEP was in place at that time

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the father, the complainant, and staff in USD #349.

The student initially took the computer-based district-wide AIMSWebPlus Reading and Mathematics tests in her second grade classroom with her teacher proctoring the test. The testing occurred beginning August 30, 2021 and ending September 3, 2021.

According to the November 19, 2021 PWN and staffing notes the student was referred and found eligible for special education and related services and an initial IEP was developed and in effect beginning November 22, 2021.

The November 22, 2021 IEP included an accommodation for “text read aloud via human or electronic reader” when given materials above the student’s level of skill for both assignments and assessments in all settings - both general and special education until reading of assigned text is completed.

The November 22, 2021 IEP stated, “The accommodation(s) listed on this IEP will be available for use on all assessments given to the student unless the accommodation invalidates the assessment results or is not allowed by assessment guidelines.”

The principal reported that the “text read aloud via human or electronic reader” accommodation was used for the vocabulary and reading comprehension subtests during the winter administration of the AIMSWebPlus, but not on the reading fluency subtest.

Tracey Pettijohn, the Title 1 teacher, did all training for the AIMSWebPlus test administrators and was responsible for inputting the IEP accommodations into AIMSWebPlus for individual student use.

The student took the computer based AIMSWebPlus Reading and Mathematics tests in a special education classroom with the complainant proctoring the test. The testing occurred beginning December 6, ending December 10, 2021.

The complainant reported that the “text read aloud via human or electronic reader” accommodation was not available to the student during the testing and reported this was a violation of the student’s IEP to both the general education second grade teacher and the building administrator.

The principal indicated that USD #349 has a procedure for ensuring the accommodations required by each student’s IEP were available for AIMSWebPlus testing. First, the test administrator was provided with a list of the student’s allowable accommodations according to each student’s IEP. Next, the test administrator accessed the tests administration settings in the computerized platform and then individually selected the accommodations required by the IEP for each student. Those accommodations were then automatically accessible when the student logged on to test. Further, the AIMSWebPlus was designed so that accommodations could not be accessed in test areas for which the scores would be invalidated. For example, the oral reading fluency would not be accessible for read aloud items.

The principal reported that the student’s AIMSWebPlus composite scores in both reading and mathematics increased between the fall and winter administrations; Reading scores increased from the 8th percentile to the 18th percentile and Math

scores increased from the 6th percentile to the 19th percentile thus demonstrating that the accommodations required by the student's IEP were helping to allow the student to show what she knows in areas where reading the text had previously lowered her scores.

Applicable Regulations and Conclusions

The IDEA at 34 C.F.R. 300.320(a)(6)(i) and K.A.R. 91-40-16(B) provides:

Any accommodation regularly used in instruction should be used on classroom assessments for children with IEPs. Individual school districts may establish their own policies for allowable accommodations for district-wide assessments. All accommodations that are necessary in order for the child to participate in state or district-wide assessments must be documented on the IEP.

In this case, the student's IEP requires an accommodation for "text read aloud via human or electronic reader" for both assignments and assessments and therefore was necessary for the student's participation in the district testing using the AIMSWebPlus in English and Math. It is further found that the student used the accommodation during testing as it was programmed in by a specially trained test coordinator who had access to the accommodations and settings. Finally, AIMSWebPlus scores in which the accommodation was used were much higher, while scores on subtests that could not use the accommodation without invalidating the score did not show progress between the first and second administration.

In addition, federal regulations, at 34 C.F.R. 300.160(b), state:

(b) Accommodation guidelines. (1) **A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.** (2) The State's (or, in the case of a district-wide assessment, the LEA's) **guidelines must – (i) identify only those accommodations for each assessment that do not invalidate the score; and (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score** (emphasis added).

Accordingly, the provision in this student's IEP stating that specified accommodations "will be available for use on all assessments, unless the

accommodation invalidates the assessment results or is not allowed by assessment guidelines," is consistent with federal law.

Based on the foregoing, the allegation that USD #349 failed to provide the accommodation specified in the student's IEP during the winter administration of the AIMSWebPlus test administration were not substantiated.

ISSUE TWO: The USD #349, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to ensure the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation during the past twelve months.

Positions of the Parties

The complainant alleged that the general education teacher did not have access to the student's IEPs during the 2021-2022 school year. As a result, the student's access to necessary services and instruction was denied.

USD #378 responds that it is their school practice that the general education grade level teacher for each student attend the student's IEP meeting and receive a copy of the proposed IEP in order to participate in the meeting. It is also the school's practice that, at the beginning of each school year, the special education teacher prints out copies of the IEP-at-a-Glance from the district's IEP management system and distributes a copy to all teachers of record for the student.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #378.

The findings of Issues One are incorporated herein by reference.

The November 19, 2021 listed the student's general education teacher as attending the meeting to discuss eligibility and services. The notes indicate she described current classroom performance.

The November 19, 2021 SCKSEC Meeting Notes listed the student's general education teacher as attending the meeting to discuss eligibility and services. The notes indicate she described current classroom performance.

The November 22, 2021 IEP recorded that the general education and special education teachers would both be assisting the student with the accommodation for organization.

The second grade general educator for the student attended and participated in the November 22, 2021 IEP

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R Sec. 300.323 (d) (2) (ii) specify that all general education teachers of the child must be informed by the IEP team of their specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. As well, state regulations at K.A.R. 91-40-16(b)(4), (5) The child's IEP must be accessible to each general education teacher who is responsible for its implementation .

In this case, the school has a regular practice for distributing the revised annual IEPs and to ensure teachers and all staff responsible for the students' instruction are provided with the IEP contents. Further, the student's IEP documents that all service providers providing IEP and related services for the student participated in the IEP meeting.

Based on the foregoing, the allegation that #USD 349 failed to ensure the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation during the past twelve months is not substantiated.

Right to Appeal

Either party may appeal the findings or conclusions 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, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The 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.

Donna Wickham

Donna Wickham, Complaint Investigator

K.A.R. 91-40-5(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)