SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #501
ON JULY 11, 2022

DATE OF REPORT: AUGUST 9, 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 July 15 and August 3, 2022. On July 14, 20 and 26, 2022, the investigator spoke via telephone with Donna Whiteman, General Counsel for USD #501.

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

- General Education Intervention Referral dated January 28, 2020
- General Education Intervention Plan – Review dated January 7, 2021
- Attendance History for the student covering the period of January 21, 2021 through May 24, 2022
- General Education Intervention Plan – Review dated August 20, 2021 (reviewed again on October 1, 2021)
- General Education Intervention Plan – Review dated March 4, 2022
- Email dated March 8, 2022 from the principal to the parent
- Email exchange dated March 31, 2022 between the principal and the parent
- Handwritten request from the parent for the student to be “tested for Special Ed” dated April 1, 2022
- Referral Form for Special Education Comprehensive Evaluation 2021-22 dated April 1, 2022
- Letter dated April 5, 2022 from the assistant principal to the parent
• Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated April 7, 2022
• Notice – Short Term Suspension dated April 14, 2022
• Email dated April 14, 2022 from the principal to the assistant principal
• Success Plan #1 dated April 18, 2022
• Email exchange dated April 18, 2022 between the principal and the assistant principal
• Parental Concern Intake Form Office of the Ombudsman dated April 28, 2022
• Email exchange dated May 3, 2022 between the building principal and the ombudsman
• Final Intake Report Office of the Ombudsman dated May 3, 2022 and revised on May 4, 2022
• Notice of Meeting dated May 6, 2022
• Multidisciplinary Evaluation Report dated May 16, 2022
• Complex Behavior FBA dated May 16, 2022
• Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated May 16, 2022
• IEP for the student dated May 16, 2022
• Student Handbook for the student’s school for the 2022-23 school year

**Background Information**

This investigation involves a 9-year-old boy who was enrolled in the third grade in his neighborhood school at the time of the incidents described in the parent's complaint.

The student was first referred for General Education intervention (GEI) on January 28, 2020. While academic progress had been seen, the student continued to perform below grade level in both math and reading. He had also been exhibiting behaviors in the classroom that were impeding his learning. A “Consulting Teacher,” a school psychologist, a social worker, a counselor, an “interventionist,” and building principals had been members of the GEI team addressing the student's issues.

As of August 20, 2021, the GEI Plan for the student included daily small group support for reading for 20 minutes and 15 minutes of small group support daily to work on addition. The plan was reviewed on October 1, 2021. At that time, the student was
moved to a more individualized small group for reading and he received 30-minutes of support twice a week. His math support was changed to 30 minutes a day to focus on subtraction. As of December 14, 2021, the GEI Plan included 20 minutes of counseling support once a week.

By March 4, 2022, GEI records indicate that the student “will shut down and has a difficult time resettling as well. He seems to want the attention no matter what it is, whether it is negative or positive...We are going to have the parent and teacher fill out the Vanderbilt ADHD screener to give to the doctor.”

The student was referred by the parent for a special education evaluation on April 1, 2022. The parent and the school had communicated about general education interventions throughout the 2021-22 school year and the parent had several telephone conversations with staff about the student’s behavior during his school days. At the time of the student’s referral, he had not been given any in-school or out-of-school suspensions.

On April 11, 2022, the district provided the parent with prior written notice of its proposal to conduct a special education evaluation. On April 12, 2022, the parent gave her written consent for the evaluation to be completed.

The student was determined to be eligible for and in need of special education services on May 16, 2022 under the category of Specific Learning Disability. An IEP was then developed for the student. According to the IEP, the student would receive special education “inclusion” support in the general education classroom for 110 minutes a day, 5 days a week. The student would also receive 60 minutes of resource/pull-out support in a special education setting for 5 days a week. Social work services would be provided for 20 minutes every other week. Goals were established in the areas of reading, math, written language, and behavior. The student’s IEP also included a Behavior Intervention Plan.

The district provided the parent with prior written notice of its proposal to provide the special education services described above on May 17, 2022. On May 18, 2022, the parent gave her written consent for the district to provide those services.

The parent has requested a transfer for the student. That transfer has been approved, and the student will be attending a new school for the 2022-23 school year. A tour of the new school is scheduled for the student for August 8, 2022, and the parent and school staff have discussed plans to schedule an IEP team meeting shortly thereafter.
Issues

In her complaint, the parent listed two concerns. Under the second concern, the parent identified two separate issues. For clarity, those issues are listed separately below as Issue Two and Issue Three.

**Issue One:** The district failed to follow the behavior plan developed in a meeting on April 18, 2022.

**Applicable Statutes and Regulations**

At K.A.R. 91-40-5, Kansas regulations state that, in filing a formal complaint, a parent must allege that the district has violated a special education law or regulation.

**Parent’s Position**

The parent alleges that on April 27, 2022 the student's classroom teacher failed to follow a behavior plan that had been developed by a school team on April 18, 2022. It is the parent’s position that the teacher removed ear buds from the student’s ears even though the behavior plan prohibited staff from engaging in any physical contact with the student if he failed to comply with a teacher direction. The parent contends that the teacher’s actions resulted in physical injury to the student. According to the parent, she was not contacted by the school at the time of the incident even though the behavior plan required the district to notify the parent in the event that “any disciplinary action” against the student would be taken.

**District’s Position**

The district did not provide a written response to this issue.

**Investigative Findings**

On Thursday, April 14, 2022, the student received a one-day suspension from school as a disciplinary consequence for “insubordination – consistent” and “failure to serve disciplinary consequences” (in-school suspension on April 13, 2022). According to a notice regarding the suspension dated April 14, 2022,

“During yesterday’s ISS [in-school-suspension], [the student] consistently did not comply with rules (out of seat, playing at recess, walking around classroom). In addition, teacher reported several Kindergartners were crying because [the
The student was allowed to return to school on April 18, 2022. On that date, a meeting was held to develop a “Success Plan” for the student’s return to school. According to the district, it is established practice for such plans to be developed any time a student returns to school following a suspension. The development of a success plan is not considered a special education action.

Both the parent and the student were present when the plan was developed as were a building administrator, classroom teacher, a paraeducator, and another individual whose role is not indicated. At the meeting, the team developed a plan that outlined responsibilities for the school, parent, and student.

According to the Success Plan, the school’s responsibilities included the following:

1. Provide the student with consistent and specific positive praise when he is doing well.
2. Give the student a directive and wait for him to respond to the directive before restating the directive.
3. Maintain a calm tone of voice when he is upset/frustrated.
4. Avoid getting into power struggles with the student when he is upset.
5. Offer the student help or modify the assignment if it is a trigger.
6. Offer the student calm down time when he is becoming frustrated. The time that he has to be able to calm down will be communicated to the student.
7. Debrief with the student after his calm down time and use corrective teaching to discuss alterative choices that could have been made when he was frustrated.
8. Staff will praise the student for making it right and remind him of strategies to use when he is frustrated.
9. The school will continue to hold the student responsible for the decisions he makes. This can include rewarding positive behaviors as well as providing consequences for undesirable actions to include, but are not limited to, Kelso’s Academy, in-school suspension, and out-of-school suspension.

On April 27, 2022, the student returned to his classroom with candy in his mouth – a reward from the reading specialist whose classroom he had just left. When his classroom teacher asked him where he had gotten the candy, the student refused to respond and placed his earbuds in his ears. The teacher removed the earbuds. That
action resulted in the student being struck in the eye. According to the parent, she was not informed about the incident by the school at the time.

After learning about the incident, the parent filed a report with the city police department asserting that the teacher had assaulted the student. The city police department directed the parent to the public-school police department since the reported incident occurred on district property.

On April 28, 2022, the parent contacted the office of the ombudsman for the district and filed a complaint regarding the April 27th incident. The parent kept the student out of school on April 28 and 29, 2022 so that – in the words of the parent - the district could create a “behavior plan” for the teacher.

According to a report from the ombudsman for the district, the teacher and a paraeducator met on May 2, 2022 to discuss a “specific plan for the student’s success.” A revised Success Plan was sent to the parent via email on May 2, 2022 for her review. The parent rejected the proposed revision in an email on May 3, 2022.

According to the ombudsman’s report, the parent’s complaint has been assigned a case number and was as of May 4, 2022 “in the hands of the [school district police] for investigation.”

**Summary and Conclusions**

In this issue, the parent alleges a failure on the part of the district to follow a “behavior plan” that had been developed on April 18, 2022. The plan developed on that date was a “Success Plan” – a plan developed by the district when students return to school following suspension. The plan is designed to facilitate the student’s return to the general education environment following a disciplinary consequence.

The student had not – at the time the first Success Plan was developed on April 18, 2022 nor when the Success Plan was subsequently revised and submitted for the parent’s review on May 3, 2022 – been determined to be an exceptional child. The student’s eligibility for special education services was not determined until May 16, 2022, and the IEP for the student was not finalized until May 18, 2022. Neither version of the Success Plan was incorporated into the student’s IEP.
The parent filed complaints with regard to the incident of April 27, 2022 with both the city and district police. The district police have assigned a case number to the complaint which is under investigation by their agency.

While the behavior plan that is included in the student’s IEP does require contacting the parent regarding behavioral incidents (see Issue Two below), the student had not at the time of the April 27, 2022 incident described in this issue been determined to be a child with an exceptionality. No IEP was in place for the student. The requirements of the behavior plan established in the student’s May 16, 2022 IEP do not govern the actions of the district with regard to the Success Plan which was intended to help the student return to the general education environment after his suspension.

Special education statutes and regulations do not address the development or implementation of general education plans such as this district’s Success Plan. The authority of a complaint investigator is limited to the investigation of the implementation of special education statutes and regulations and does not allow an inquiry into issues that are not covered under those laws. Therefore, once the investigator determined that the Success Plan was not a special education or related service to which the student was entitled, no further investigation was conducted. No violation of special education statutes and regulations was identified with regard to this issue.

**Issue Two:** The district failed to follow the behavior plan established in the student’s IEP.

**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 the district did not contact her regarding the student’s behavior as is required by the student’s behavior plan. The parent further contends that school staff members have been instructed not to contact the parent directly and to route all communication through building administration or district leadership.
It is also the position of the parent that the district continued to allow classmates to bring work to the student when he had been removed from the classroom even though the student’s behavior plan specifically prohibited the delivery of materials by other students.

**District’s Position**

The district did not provide a written response to this issue.

**Investigative Finding Regarding the Reporting of Student Behaviors to the Parent**

Under the heading “Reactive Strategies,” the “Behavior Intervention Plan” section of the student’s May 16, 2022 IEP contains the following statements:

“Describe student during De-escalation phase: [The student] will often fidget or cry and want to call his mom.

Reactive Strategies: Once [the student] has calmed, assigned staff member will call the parent and debrief them on the situation along with documenting the incident in [the student’s] behavior sheet.”

The Daily Point Sheet for the student for May 18, 2022 shows that he engaged in a number of inappropriate behaviors including not following directions, not attending to task, and disrupting class. According to the point sheet, the student yelled, walked away from his seat, and walked around the classroom with scissors.

On May 20, 2022, the point sheet for that date shows that the student again failed to follow directions, disrupted class, and threw an ice pack at another student.

The point sheet completed for May 23, 2022 shows that the student did not follow directions on numerous occasions throughout the day. He often did not attend to task and disrupted class. The point sheet shows that he yelled three times and argued once. He was disrespectful once, hit once, kicked once, and lied once. Notes on the point sheet indicate that he threw a pencil when he felt a task was too hard. He sang loudly and talked “across the room” during a quiet time.
According to the district, the assistant principal was identified as the designated contact person for the parent in late April of 2022. Prior to that time, the building principal or the Consulting Teacher had served as the primary contact for the parent.

The parent reports that she had received calls regarding the student’s behavior from a number of people prior to the April 27, 2022 incident described above under Issue One. According to the parent, she had previously received calls from the classroom teacher, the paraeducator, the consulting teacher, the principal, and the assistant principal, but after she filed a complaint with the city and district police, staff were directed to channel communication with the parent through building administration.

Though not explicitly stated in the student's behavior plan, it was the understanding of the parent that she would be contacted if the student's behavior resulted in him missing out on more than 10 minutes of instruction. The parent asserts that no one from the school contacted her about the student's behavior on any of the three days identified in this complaint even though the point sheets clearly reflect that he missed out on more than 10 minutes of instruction on two of the three days. While the student's behavior was documented on a point sheet on these three days as required by the student’s IEP, the district provided no evidence to show that the assistant principal or any other staff member contacted the parent on May 18, 20, or 23, 2022 to brief her on the student’s behavior.

**Summary and Conclusions Regarding the Reporting of Student Behaviors to the Parent**

The IEP does not reflect a clear meeting of the minds between the district and the parent regarding what would trigger a call to the parent to inform her about the student’s behavior and who the assigned staff would be to place that call. While the parent believed that she would be called if the student’s behavior led to him missing more than 10 minutes of instruction, that level of specificity is not included in the student’s IEP. The Behavior Intervention Plan included in the student’s May 16, 2022 IEP requires that an “assigned staff member will call the parent and debrief them on the situation along with documenting the incident on [the student's] behavior sheet, but that “assigned staff member” is not identified.

While the district did complete a behavior sheet for each of the three days in question, no evidence was provided to show that on May 18, 20, or 23, 2022 any “assigned staff” member contacted the parent to brief her on the student’s behavior as is required by the student’s IEP. A violation of special education statutes and regulations is substantiated on this issue.
Investigative Findings and Conclusions Regarding Delivery of Assignment by Classmates

According to the parent, the student was upset by having another student bring him materials and assignments when he had been removed from the classroom because of inappropriate behavior. The parent reports that the student making the delivery would sometimes tease the student, and a confrontation would ensue. The parent reports that she had requested that materials no longer be brought to the student by another child, and the district had agreed to that request. The parent believed that this restriction was added to the Behavior Plan in the student’s May 16, 2022 IEP.

While the district does not dispute it agreed that peers were not to deliver materials to the student, the Behavior Plan in the student’s May 16, 2022 IEP does not specifically include that limitation.

The parent did not provide any additional facts in support of her contention nor any specific evidence to show when or how the district failed to follow the student’s Behavior Plan with regard to this issue. A violation of special education statutes and regulations is not substantiated on this issue.

Issue Three: By refusing to allow the parent to move throughout the student’s school without an escort, the district has retaliated against the parent for filing a complaint with the city and district police.

Parent’s Position

The parent asserts that the building principal treated her “like a terrorist” when he insisted that he escort her to the student’s classroom while allowing other parents to move through the building unescorted.

District’s Position

The district did not provide a written response to this issue.

Applicable Statutes and Regulations

Special education laws provide parents with a number of safeguards to ensure their meaningful participation in making decisions regarding the evaluation and special education eligibility determination for their children. Districts must ensure that
parents have the opportunity to be members of the IEP team that makes decisions on
the placement of their child and the provision of special education and related services
to their child.

However, neither federal or state laws nor regulations give parents the right to observe
their children in class. While a district may give a parent permission to observe a child
in class if doing so would not disrupt school activities and would help the district and
the parent work together to develop an appropriate IEP, there is no legal obligation for
that to occur. Many districts have policies that define the conditions under which
parents and others may observe children in school and they may establish practices
that restrict free access to school buildings and classrooms.

**Investigative Findings**

The Board Policy for the district establishes, at 2325 IV, that “school district
administrators shall have the absolute right and authority to determine the time, place,
and manner in which any person is allowed to visit, volunteer in, or attend any school-
sponsored meeting or event or otherwise enter any school district building.”

The student handbook for the student’s school for the 2021-22 school also references
parent visitation as follows:

**VISITING THE SCHOOL TO OBSERVE YOUR CHILD OR ATTEND A FUNCTION**

1. When visiting State Street Elementary, the following procedures must be
followed to ensure school safety:

- Please check-in through the office.
- All visitors must have on a visitor’s badge.
- If observing, please do so quietly focusing only on your child's behavior.
- If you have problems concerning your child, ask the teacher to arrange a
conference at another day/time. The child should not be present when
discussing his/her progress unless the teacher and the parents believe
their presence would help the child.
- Children not attending State Street are not allowed to visit unless
accompanied by an adult.
- If a parent/guardian has a concern or is upset with the school, he/she will
be asked to discuss matters with the principal in her office.
In an email to district staff and outside agencies dated May 4, 2022, the parent stated that she had gone to the school that day “just to check on the children, which [she had] done numerous times without any issue.” The parent reported that after she had checked on her daughter (who attends the same school as the student), the building principal approached her in the hallway and began walking with her, stating that he thought it best if he escorted her “to ensure the safety of [the parent] and everyone else.” The parent wrote that she went to the student’s classroom where she “was unable to locate the ‘no candy’ rule in the classroom.” After telling the student that she loved him, she left the classroom.

As she was exiting the building, the parent observed another parent who “was able to move freely around the school.”

On May 5, 2022, the parent sent an email to the General Director of Early Childhood and Elementary Education for the district and to other district staff. In that email, the parent stated that it had been her intent to visit the school “everyday [sic] for the rest of the school year,” but she had decided not to follow through on that plan because she was “completely uncomfortable.”

Additional email correspondence between the district and the parent indicates that the parent was provided with the Board Policy and determined that she was being considered an “unauthorized visitor” who was required to “have permission to be on school property for any reason including events.” The parent wrote in an email dated May 22, 2022 that she hoped she would be “granted permission to attend [her daughter’s] promotion.” The building principal responded by email to the parent, stating “I would love for you to attend.”

No evidence was provided to show that the parent was prohibited from attending any school event. While the parent did not visit the school on a daily basis during the month of May 2022, she did participate in the scheduled meetings related to the special education evaluation of the student and to the determination of his eligibility to receive special education services. The parent also participated in the IEP team meeting for the student.

**Summary and Conclusions**

There is no prohibition in special education statutes and regulations against the establishment of district policies regarding school visits by parents. Complaint investigators have no authority to investigate such policies unless they impede the
parent's ability to participate in decision-making regarding the special education evaluation or placement of the child or regarding the provision of special education services to an eligible student.

While asserting that restrictions put in place by the school made her very uncomfortable and targeted, the parent does not assert that the school's policy impacted her participation in any special education action on the part of the district. 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.

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.

2) By no later than August 15, 2022, the district shall schedule an IEP team meeting for the student to review the student's behavior plan. At that meeting, the team shall identify a) the specific circumstances that will trigger a call to the parent to report on the student’s behavior, and b) who the “assigned person” or persons will be to make that call. The student’s IEP will be revised to include these elements, and the parent will be provided with prior written notice of the changes to the student's IEP.

3) Within 5 school days of the IEP meeting described above under Corrective Action 2, copies of the revised behavior plan and the prior written notice document will be provided to SETS.
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)