

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #233

ON AUGUST 10, 2022

DATE OF REPORT SEPTEMBER 9, 2022

This report is in response to a complaint filed with our office on behalf of \_\_\_\_\_ by her mother, \_\_\_\_\_. In the remainder of the report, \_\_\_\_\_ will be referred to as "the student." \_\_\_\_\_'s parents are \_\_\_\_\_ and in the remainder of this report they will be referred to as "the mother," "the father," "the parents," or "the complainants".

The complaint is against USD #233 (Olathe Public Schools). In the remainder of the report, the "school," the "district," the "local education agency (LEA)" shall refer to USD #233.

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 August 10, 2022 and the 30-day timeline ends on September 9, 2022.

## Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on August 13 and August 29, 2022. Emails were exchanged between August 10 and August 29, 2022.

Staff of USD #233, Olathe Public Schools interviewed on August 24, 2022 included Deb Chappell, Assistant Director of Special Services, Ashley Enz, Special Services Coordinator, Dr. Sarah Gilliland, Director of Health Services, and Anjanette Tolman, Executive Director of Special Services.

The Complaint Investigator also exchanged emails with the #USD 233 staff between August 15, 2022 and August 25, 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:

- Kansas Special Education Reimbursement Guide for Nurse/School Nurse, revised May 16, 2022
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent (PWN), dated June 8, 2022
- Individualized Education Program (IEP), dated June 14, 2022
- Email from Laura Warren, Center-Based Resource Consultative Teacher to Matt Kunstman, Special Services Coordinator, Ms. Enz, Heidi Schneider, Special Services Coordinator and Ms. Tolman, dated August 6, 2022 at 11:07 p.m.
- Email from Ms. Toman to Ms. Warren, Mr. Kunstman, Ms. Enz, and Ms. Schneider, dated August 6, 2022 at 11:10 p.m.
- Email from Ms. Warren to Ms. Tolman, Mr. Kunstman, Ms. Enz, and Ms. Schneider, dated August 6, 2022 at 11:13 p.m.

- Email from Sherry Evilsizor, Teacher, Madison Place Elementary, to classroom parents, dated August 8, 2022, forwarded by Dr. Gary Stevenson, Principal, Madison Place Elementary on August 15, 2022 at 8:39 a.m.
- Email from Gwen Beebe, Vice President of Operations & Business Development, Phoenix Home Care & Hospice to Sally Boyd, Special Services Specialist, Olathe Public Schools, dated August 11, 2022 at 10:28, a.m.
- Written notes of a telephone conversation between mother and Ms. Enz, written by Ms. Enz, dated August 11, 2022
- Email from Ms. Boyd to Ms. Beebe, dated August 12, 2022 at 10:05 a.m.
- Phoenix Home Care and Hospice Services Agreement for contract dates of August 2022 - June 2023 between Olathe Public Schools Unified School District No. 233 and Phoenix Home Care and Hospice with Contractual Provisions Attachments signed by Phoenix Home Care & Hospice on August 11, 2022 and Olathe Public Schools Unified School District No. 233 on August 12, 2022
- Correspondence, dated August 15, 2022 to document collaboration time between Tammy Shull, LPN, Phoenix Home Care & Hospice and Jennifer Casson, BSN, RN, School Nurse, Madison Place Elementary
- Participant sign in sheet for Inservice on student's Deaf or Hard of Hearing services and equipment, dated August 18, 2022 conducted by Dawnetta Leigh Unkel, Audiologist, Olathe Public Schools
- Agenda and Participant sign in sheet for feeding and swallowing services for the student, dated August 18, 2022, conducted by Chelsie Green, Speech-Language Pathologist, Olathe Public Schools
- Eating At A Glance handout with list of recipients for the student, dated August 18, 2022
- Participant sign in sheet for Heartsaver CPR and First Aid, dated August 18, 2022, conducted by Dr. Gilliland
- Email from Ms. Chappell to parent, dated August 18, 2022 at 3:26 p.m.

- Email from Ms. Gilliland to parent dated August 19, 2022 at 9:08 a.m.
- Olathe USD 233 Response to Formal Complaint 23FC233-001, dated August 21, 2022

### **Background Information**

This investigation involves a six-year-old female student who is currently enrolled at Madison Place Elementary School in USD #233 as a kindergartner. She is eligible for special education and related services under the category of Multiple Disabilities. She lives with her mother and father.

The student received home-bound special education services and related services from her neighborhood school in USD #233, Forest View Elementary. Her last annual IEP was developed May, 23, 2022 and revised on June 14, 2022 to record the IEP team decision to move to in-school services for the 2022-2023 school year.

### **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 #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP by failing to properly train staff for the needs of the student for the 2022-2023 school year.

## Positions of the Parties

The complainant alleged that the district was not following the student's current IEP. The IEP was revised this summer so the child can receive in-school services. The IEP stated a specially trained nurse, and the IEP team were to communicate with the home health nurse about ongoing safety and services for the student to ensure the staff were well-prepared. During the June 8, meeting the IEP team discussed using the family's home health provider and contingency plans for nursing absences and training. They stated they did not hear of any plans or updates as the start of the school year neared and not until August, did they learn that the school district had not hired a nurse, nor reached out to coordinate with the home health nurse. The parent stated her child could not safely receive services in-school until the nursing services were in place and that the nurse and staff were trained as outlined in the IEP.

The district responded that the student attends a Center Based Resource Level II program for medically fragile students that addresses the needs of students who have intellectual disabilities and other specialized education and health services due to physical or medical needs.

The student's IEP describes specific staff training to allow the student to receive FAPE. Although the IEP contains no specific timeline for completion of this training, it was completed within four days of the student's attendance. The district acknowledged that it had not been able to hire a new nurse in spite of advertising for the position. In communicating this with the parents, the parents asked if the district could contract with the agency the family used for home health services to ensure the nurse was familiar with the student's health needs. While this home health agency had not previously been contracted in the district, USD #233 developed a contract for the student's attendant care services and signed a contract for the school year to provide services to start the school year. Unfortunately, the parent's preferred provider was not scheduled to work the first two days of the school year so training could not occur prior to the start of the school year. They stated the parents agreed to the timing of the training.

## Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the complainant and staff in USD #233.

The June 14, 2022 IEP Least Restrictive Environment School Setting statement references “full day nursing care at school”. Further, it is noted that in kindergarten, the student will need access to specialized instruction in all areas, as well as continuous health/medical care.

The June 14, 2022 IEP lists 415 minutes of Attendant Care provided by a Nurse be provided five days every week.

The June 14, 2022 IEP specifies in the Other Considerations section that staff training (listed below) be provided, however a timeline for completion of the staff training is not specified:

- Needs of a student with a hearing loss, (ex. Remote microphone technology, cochlear implants)
- Feeding and swallowing, aspiration
- CPR and First Aide

The June 8, 2022 PWN states “the regular building nurse will be trained how to provide for *student’s* needs and the personal LPN from home will be allowed to collaborate and provide training for school nursing staff.”

Staff notes of a telephone conversation between Ms. Enz and the mother on 8/11/22 at 4:09 p.m. state the IEP training for staff should occur and be documented, but it would be hard to schedule now that school has started. According to the staff note, the parent told Ms. Enz that it was “no big deal” to do training when *student* is at school.

Interview with both staff and parent show that the student’s personal LPN from home provided training to the building RN and other staff the first day Kaylee attended school, Monday, 8/15/22, and consulted with classroom staff throughout the first week of school. Additionally, the parent provided a safety procedure guide for anyone on the team to reference or in the case of a staff absence.

Agendas and participant sign in sheets show the training topics specified in the June 14, 2022 IEP were completed on August 15, 2022. Specifically,

- Inservice for eleven staff regarding the needs of a student with a hearing loss (ex. Remote microphone technology, cochlear implants) was completed by Dawnetta Unkel, Audiologist, on 8/18/22.
- CPR and First Aid training was provided to nine staff in CBR II classrooms by Dr. Sarah Gilliland, Director of Health Services, on 8/18/22.
- Feeding, swallowing, and aspiration training was completed with fourteen participants by Chelsie Green, Speech Language Pathologist, on 8/18/22.

The parents and district report that the student will not attend school on Fridays because the student's preferred LPN from Phoenix Home Health & Hospice is not able to work those days. The district stated that this is the district's offer of a Free Appropriate Public Education (FAPE) and it should remain in the student's IEP even if the parent elects to keep the student home on particular dates.

The Kansas Special Education Reimbursement Guide (rev 5/16/2022) dictates that a registered nurse licensed in Kansas with a multistate or single license (Kansas Board of Nursing) ...can be claimed for the provision of special education services as identified in the anticipated services section in individual student's IEPs which must contain anticipated frequency, duration, and location of specific special education nursing services.

Ms. Chappell reports that the district has advertised for a registered nurse (as required The Kansas Special Education Reimbursement Guide (rev 5/16/2022) but no one has applied to date.

Ms. Chappell reports that the district retains two health and nursing agencies to provide nursing and health services for the district and was prepared to contract with one of the agencies to provide the IEP services, however the parents asked if the agency that provides home health services for the student could be retained since they are familiar with the student.

Emails show that the district began correspondence with Phoenix Home Health & Hospice services (the parent's Home Health Agency) beginning August 6, 2022 to secure a contract between the agency and the district.

The Contract between the district and Phoenix Home Care & Hospice was executed August 12, 2022 and shows that the district will obtain the services of a Licensed Practical Nurse (LPN) for Private Duty Nursing beginning August 2022 - June 2023 for the hours the student is attending school and in need of Private Duty Nursing Services. By report this nurse is currently providing nursing services to the student in the home.

The district stated the itinerant RN was available to support the student, in addition to the regular building RN.

The parents and district report that the student's first day attending school was Monday, August 15, 2022, by Parent decision. The parent elected not to send the student to the first half-day of school on Thursday, 8/11/22 or Friday, 8/12/22 because the preferred nurse from Phoenix Home Health & Hospice was not able to work those days.

### **Applicable Regulations and Conclusions**

34 C.F.R. 300.320(a)(4)(i), 34 C.F.R.300.320(a)(7) and K.S.A. 72-3429(c)(4) state that each IEP for a child with an exceptionality must include a statement of the supports for school personnel that need to be provided for each child to enable him/her to advance appropriately toward attaining their measurable annual goals and to be involved and progress in the general education curriculum. These supports may include specialized staff development. The program modification and/or support for school personnel in the IEP must state not only the anticipated frequency, location, and duration of those services and modifications but also, "the projected date for the beginning of the services..." (34 C.F.R.300.320(a)(7)).

In this case it is found that while the IEP listed a statement of supports for school personnel for the child to receive FAPE. The specific training topics were listed in the Other Considerations section of the June 14, 2022 IEP. It is further found that the district provided the specified training to the appropriate staff.

However, a procedural error occurred when the training date was not specified in the IEP.

It is noted that the district completed the specified training the first week the student was in attendance and the nurse familiar with the student provided the attendant care. The student's IEP does not require any additional training.

### **Corrective Action**

Information gathered in the course of this investigation has substantiated noncompliance with a special education statute and regulation. A procedural violation occurred in the following area:

A. Federal regulations at 34 C.F.R. 300.320(a)(4)(i)), 34 C.F.R.300.320(a)(7) and K.S.A. 72-3429(c)(4) require school districts to specify the projected date to conduct the support services to enable the student to advance appropriately toward attaining their measurable annual goals and to be involved and progress in the general education curriculum.

In this case, USD #233 committed a procedural error when it did not specify a projected date to conduct the training listed in the Other Considerations section of the June 14, 2022 IEP for the student.

Based on the foregoing, USD #233 is directed to take the following actions:

1. By October 1, 2022 USD #233 shall submit evidence that special education staff have been notified to write all IEPs to include anticipated frequency, location, and duration of services and modifications, and the projected date for the beginning of those services and modifications.
2. Further, USD # 233 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services 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). Due to COVID-19 restrictions, appeals may either be emailed to [formalcomplaints@ksde.org](mailto:formalcomplaints@ksde.org) or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

### **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](mailto: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)