

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #501

ON OCTOBER 21, 2022

DATE OF REPORT OCTOBER 31, 2022

This report is in response to a complaint filed with our office on behalf of Student by his mother, Parent. In the remainder of the report, Student will be referred to as “the student.” Student’ mother is Parent and in the remainder of this report she will be referred to as “the mother,” “the parent,” or “the complainant.”

The complaint is against USD #501, Topeka Public Schools. In the remainder of the report, “the school,” the “district,” and the “local education agency (LEA) shall refer to USD #501.

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 October 21, 2022 and the 30-day timeline ends on November 21, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on October 22, 2022 and the Director of Special Education, Dr. Jennifer Harrington, USD #501 on October 25, 2022.

The Complaint Investigator also received emails from the parent and USD #501 between October 22 and October 26, 2022.

Additional allegations were made by the complainant but are outside the jurisdiction of the Individuals with Disabilities Education Act (IDEA) so were not investigated. The parent had the resources necessary to pursue these allegations.

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

- General Education Intervention Referral, dated August 17, 2022
- Reference to an email from parent to Dr. Jennifer Harrington, Director of Special Education, Topeka Public Schools dated September 23, 2022
- Email from Parent to Ms. Amy Wagner, Assistant Principal, French Middle School dated September 29, 2022 at 7:31 a.m.
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent, dated September 30, 2022, signed October 17, 2022 by Parent
- Email from Ms. Jean Ryan, 504 point of contact, Topeka Public Schools to Ms. Wagner, dated October 4, 2022 at 1:01 p.m.
- Email from Ms. Wagner to Parent dated October 5, 2022 at 2:41 p.m.
- Email from Parent to Ms. Wagner dated October 5, 2022 at 3:02 p.m.
- Email from Ms. Wagner to Parent dated October 5, 2022 at 5:07 p.m.
- Email from Ms. Wagner to Ms. Ryan dated October 5, 2022 at 2:38 p.m.
- Email from Parent to Ms. Wagner dated October 6, 2022 at 6:57 a.m.
- Email from Ms. Wagner to Parent dated October 6, 2022 at 1:51 p.m.
- Email from Ms. Wagner to Parent dated October 7, 2022 at 2:39 p.m.
- Email from Ms. Wagner to Parent dated October 12, 2022 at 10:09 a.m.
- Email from Ms. Wagner to Parent dated October 13, 2022 at 2:10 p.m.
- Email from Parent to Ms. Wagner dated October 13, 2022 at 2:22 p.m.

- Email from Parent to Ms. Wagner dated October 13, 2022 at 2:23 p.m.
- Email from Parent to Dr. Anderson dated October 14, 2022 at 7:00 a.m.
- Email from Parent to Ms. Wagner dated October 18, 2022 at 7:18 a.m.
- Email from Parent to Ms. Wagner dated October 18, 2022 at 8:46 a.m.
- Email from Parent to Ms. Wagner dated October 18, 2022 at 10:51 a.m.
- Email from Parent to Dr. Anderson and Dr. Harrington dated October 18, 2022 at 7:55 p.m.
- Email from parent to Dr. Harrington dated October 18, 2022 at 3:31 p.m.
- Email from Parent to Dr. Anderson, Office of Civil Rights and Ms. Billie Wallace, Assistant Superintendent, Teaching & Learning, Topeka Public Schools dated October 19, 2022 at 11:10 a.m.
- Email from Parent to Dr. Anderson and Ms. Wallace dated October 20, 2022 at 7:12 a.m.
- Email and parent letter from Parent to Dr. Anderson and Ms. Wallace dated October 21, 2022 at 8:37 a.m.
- Email and timeline from Parent to Complaint Investigator, dated October 22, 2022 at 12:37 p.m.
- Email from Parent to Complaint Investigator, dated October 22, 2022 at 5:56 p.m.
- Email from Parent to Complaint Investigator, dated October 22, 2022 at 6:04 p.m.
- Email from Parent to Complaint Investigator, dated October 22, 2022 at 7:11 p.m.
- Email from Parent to Complaint Investigator, dated October 22, 2022 at 7:12 p.m.
- Email from Parent to Dr. Anderson, Ms. Wallace and Dr. Harrington dated October 24, 2022 at 8:00 a.m.
- Email from Ms. Wagner to Parent dated October 24, 2022 at 10:23 a.m.
- Copy of document on Topeka Public Schools letterhead that includes parent correspondence in black ink with French Middle School Principal and Assistant Principal response in blue ink, undated

Background Information

This investigation involves a 6th grade student enrolled at French Middle School in USD #501. He is not currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA). He receives accommodations for learning and behavior through a General Education Intervention Plan (GEI). He was referred for a special education evaluation by his mother on September 23, 2022 and the parent signed consent for evaluation on October 17, 2022. A special education evaluation is ongoing within acceptable timelines.

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: USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to provide Free and Appropriate Public Education (FAPE) to the student by not providing accommodations regarding discipline.

Positions of the Parties

The complainant alleged that her child is struggling academically, but especially behaviorally at the middle school even with general education interventions. The Parent states that she has requested an evaluation to determine if her child is eligible for special education services. She alleges that while the district is conducting the special education evaluation, he is being held to general education school and district standards and not being afforded the protections of FAPE for his disability during this time.

The district responded that they are complying with the Individuals with Disabilities Education Act in regard to this student's services while the student is undergoing the

special education evaluation. The district received a parent request to evaluate the student for special education services and provided a PWN to evaluate the student. They are communicating with the parent to review the existing student data and schedule additional evaluation. They stated they are operating within the timelines to schedule and complete that evaluation.

Findings of the Investigation

Parent interview and review of the General Education Intervention (GEI) indicate that the student has received academic and behavior interventions since kindergarten.

The Parent reports that the student began experiencing behavioral problems when he started middle school. As a result, she contacted the school with those concerns and to discuss solutions.

Ongoing emails during September and October show that the Parent and school staff discussed student disruptions during class and in the afterschool program.

Ongoing emails during September and October show that the Parent requested a review and revision of the GEI, and a meeting was held with ongoing discussion.

The parent reported she made a written request for a special education evaluation to the district on September 23, 2022.

The district provided the parent with a Prior Written Notice for Evaluation or Reevaluation and Request for Consent (PWN), dated September 30, 2022 to evaluate the child to determine if he is eligible for special education and related services as a child with a disability. The PWN was subsequently signed by the parent on October 17, 2022.

Emails indicated the parent requested exceptions to classroom and school-wide behavioral expectations based on a “known disability” (term used in emails from the parent) and is being punished for his disability and stated he has IDEA discipline protections.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.101(c)(2) states that the determination that a child is eligible, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

The district and parent both agree that the child will be evaluated to determine if he qualifies for special education and related services. According to the PWN that was developed and signed by the parent the evaluation will provide data to make that determination.

34 C.F.R 300.534(a) describes protections for children not yet determined to be eligible for special education and related services. That regulation says that from the date the parent has requested a special education evaluation to the date the evaluation is completed, the school district is deemed to have knowledge that the child is a child with a disability, and that child may assert any of the protections provided for in the special education law.

The evidence shows this parent requested a special education evaluation on September 23, 2022. Therefore, the parent may, on behalf of her child, assert any of the protections provided for in special education law as of September 23, 2022. That does not mean a district must begin providing services on the date the parent requests a special education evaluation. Such an interpretation would violate some of the most core requirements of the IDEA, including that to begin providing special education services to a child, the child must first be determined to be eligible for special education and an IEP must be developed by an IEP team through the procedures specified in the law, and the district must receive written parent consent before any implementation of any services in an initial IEP. The provision in 34 C.F.R. 300.534(a) to "protect" children undergoing an initial evaluation does not (and cannot) erase any of these statutory provisions.

The "protections" referred to in 34 C.F.R 300.534(a) do not refer to services. The "protections" refer to the disciplinary protections in the IDEA. That means that, beginning on the date the parent requests a special education evaluation, the student

may not be suspended for more than 10 consecutive school days unless a manifestation determination review (MDR) shows the behavior is a manifestation of the (suspected) disability. It also means that if, beginning on the date the parent requests a special education evaluation, the child is suspended for more than 10 consecutive school days, or is suspended for more than 10 cumulative school days for behavior that is not a manifestation of the suspected disability, the school district is obligated to provide educational services to the child, although it may do so in an alternative setting.

The student has been referred for a special education evaluation, but until it is determined if he is eligible for special education and related services, an IEP has been developed, and consent to implement the initial evaluation has been obtained, a determination of denial of FAPE is impossible. There is simply no FAPE obligation at this time.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the student's FAPE was denied.

ISSUE TWO: USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent participation in the student' IEP process.

Positions of the Parties

The complainant alleged that the district offered in-person meetings to discuss her son's academic and behavioral concerns and services in spite of her repeated requests for Zoom or phone meetings to accommodate her vision needs. When she did not agree to in-person meetings because she could not participate, she alleged her son did not receive appropriate services because there was not parent participation.

The district responded that they are complying with IDEA in including the parent in planning and conducting the evaluation. As the student has not been found eligible for special education or related services a discussion of changes in his services and accommodations based on a special education disability eligibility category are premature.

Findings of the Investigation

The following findings are based upon a review of documentation and interview with the complainant and the district.

The findings of Issue One are incorporated herein by reference.

The parent made a written request for a special education evaluation to the district on September 23, 2022 and the district responded to that request with a PWN to evaluate the child to determine if he is eligible for special education and related services as a child with a disability.

Emails indicated that the parent and district have exchanged information about 1) the areas of concern by both the parent and school, 2) a review of the GEI, and 3) areas that the district proposed to evaluate and areas that will rely on record review.

Emails from the parent show the parent requested Zoom or phone meetings due to her health conditions.

An October 14, 2022 letter from the principal offered daily or weekly meetings in-person, via Zoom or by phone call.

Applicable Regulations and Conclusions

The child is not currently receiving special education and related services. He was referred for an initial special education evaluation on September 23, 2022.

At this point the role of parent participation during evaluation is outlined in 34 C.F.R. 300.305(b); 34 C.F.R. 300.300(d)(1) and K.A.R. 91-40-8(c), (d); K.A.R. 91-40-27(e). It states the district has an obligation to follow a process to gather information about the student, including gathering input from the child's parent about the academic, behavioral, and other concerns as well as assist in developing an evaluation plan. These activities take place in the initial phases of an evaluation, referred to as a review of existing data. The parent has a right to participate in the review of existing data, but that participation may be obtained by the district using a variety of methods. K.A.R. 91-40-8(d) states that the district "may conduct its review without a meeting."

After speaking with the parent and reviewing the documents it is found that the district is following regulation in including the parent in preparing for the evaluation. Upon completion of the evaluation, the district is required to meet with the parent to make an eligibility determination. When this evaluation reaches that point, the district will be required to meet with the parent and offer alternative methods of participation for the parent.

It is further found that because the student is currently being evaluated for special education and related services under IDEA, and an eligibility decision has not yet been determined, it is premature to investigate parental participation around the provision of services and interventions.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that parental participation was denied.

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, Ph.D.

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)