

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #446

ON NOVEMBER 17, 2022

DATE OF REPORT DECEMBER 26, 2022

This report is in response to a complaint filed with our office on behalf of Student by his mother, Mother. In the remainder of the report, Student will be referred to as “the student.” Student’s mother is Mother 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 #446, Independence Public Schools. In the remainder of the report, the “school,” the “district,” and the “local education agency (LEA) shall refer to USD #446.

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 November 17, 2022 and the 30-day timeline ends on December 19, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent initially by telephone on November 17, 2022 and Matt Ysusi on December 5, 2022.

The Complaint Investigator also received emails from the parent and USD #446 between November 17, 2022 and November 30, 2022.

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

- Psychological Evaluation dated December 10, 2021 from The Therapy Center
- Report from Four County Mental Health Center dated July 13, 2022
- 2022-2023 Student Accommodation for the student
- Email from Mr. Ysusi to parent dated August 15, 2022 at 12:09 p.m.
- Email from parent to Matt Ysusi, Assistant Director, Tri-County Special Education Interlocal 607 dated August 15, 2022 12:16 p.m.
- Email from Kurt Seiler, Principal, Independence High School USD #446 to parent on August 16, 2022 at 7:05 a.m.
- Score page from Renaissance Parent Report dated August 19, 2022
- Email from Mr. Ysusi to Mr. Seiler and Ms. Allen dated August 23, 2022 at 3:33 p.m.
- Email from Ms. Allen to parent dated August 24, 2022 at 8:36 a.m.
- Email from parent to Ms. Allen dated August 24, 2022 at 11:29 a.m.
- Email from Ms. Allen to Mr. Ysusi dated August 25, 2022 at 11:33 a.m.
- Independence High School Transcript for the student, generated on August 25, 2022
- Independence High School Student Test Scores Detail for the student, generated on August 25, 2022
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated August 29, 2022
- Conference Summary dated August 29, 2022 and signed by Tri-County Assistant Director, Principal, and School Psychologist. It was noted that the Parent attended via Zoom
- Email from parent to Mr. Ysusi dated August 31, 2022 at 11:45 a.m.
- Letter from NLK Counseling Mental Health Therapy dated September 2, 2022 referencing June 2021 Treatment Plan
- Email from parent to Teresa Jefferson, School Psychologist, USD #446 and Valene Schmitz Counselor, Independence High, USD #446 dated September 13, 2022 at 8:32 a.m.

- Email from parent to Ms. Allen and Mr. Ysusi dated October 10, 2022 at 8:19 a.m.
- Email from Mr. Ysusi to parent dated October 12, 2022 at 1:41 p.m.
- Email from parent to Mr. Ysusi dated October 12, 2022 at 2:16 p.m.
- Email from Ms. Allen to Emily McCambridge, Director, Tri-County Special Education Interlocal 607 dated October 13, 2022 at 11:24 a.m.
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated October 14, 2022 and signed electronically by Parent on October 14, 2022
- November 4, 2022 signed letter from Labette Health
- Email from parent to Mr. Ysusi, Ms. Allen and Ms. McCambridge dated November 4, 2022 at 1:55 p.m.
- Email from parent to Ms. McCambridge dated November 7, 2022 at 1:50 p.m.
- Notes from a phone call from parent to Ms. McCambridge dated November 7, 2022 at 4:10 p.m.
- Email from the parent to Ms. Allen dated November 14, 2022 at 11:44 a.m.
- Email from parent to Ms. Reichenberger dated November 15, 2022 at 12:46 p.m.
- Email from parent to Ms. Reichenberger dated November 15, 2022 at 1:02 p.m.
- Email from Ms. Reichenberger to parent dated November 15, 2022 at 1:08 p.m.
- Email from parent to Lindsey Reichenberger, Home and Health Coordinator, USD #446 and Marcus Lanning, Assistant Principal, Independence High, USD #446 dated November 15, 2022 at 2:02 p.m.
- Email from Mr. Holehan to parent dated November 15, 2022 at 3:20 p.m.
- Email from parent to Travis Holehan, Math Teacher, USD #446 dated November 15, 2022 at 4:11 p.m.
- Parent Teacher Contact Log inclusive of dates August 22, 2022 through November 16, 2022
- Star Diagnostic Report - Reading for the student, generated on November 17, 2022
- Star Diagnostic Report - Math for the student, generated on November 17, 2022
- Behavior Detail Reports for the 22-23 school year for the student
- Email from parent to Ms. Allen dated November 18, 2022 at 12:33 p.m.
- Email from Ms. Allen to parent dated November 18, 2022 at 1:01 p.m.
- Email from parent to Ms. Allen dated November 18, 2022 at 1:26 p.m.

- Email from Ms. Allen to parent dated November 18, 2022 at 2:28 p.m.
- Email from parent to Ms. Allen dated November 18, 2022 at 3:26 p.m.
- Email from parent to Ms. Allen dated November 21, 2022 at 8:58 a.m.
- District response to complaint received on November 29, 2022

Background Information

This investigation involves a 10th grade student enrolled at Independence High school in USD #446 since August 2022. He attended Andover eAcademy, a virtual school previously. 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 extended time during testing.

He lives with his mother and sister. He currently receives services through Four County Mental Health outside of school and participates in the PreETS program. In a November 2021 evaluation from the Therapy Center, he received three DSM-V Diagnosis: Disruptive Mood Dysregulation Disorder, Attention Deficit Hyperactivity Disorder - Combined Subtype, and Unspecified Trauma-and Stressor-Related Disorder. The report also states that he was previously diagnosed with Attention Deficit Hyperactivity Disorder in 2014.

ISSUE ONE: The USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

Positions of the Parties

The complainant alleged that her student has medical diagnoses that impact his educational performance at school. This is demonstrated by his involvement in local mental health services. He has successfully used accommodations in the past such as extended testing time and just this year when the accommodation was not provided demonstrated his need for this type of support. She contends that the district needs to conduct a comprehensive special education evaluation to determine the impact of his medical diagnoses on his school behavior and social and educational performance. She alleged that the district did not consider the student's mental health disability when refusing to evaluate her child for special education services in August 2022 and

while they have agreed to evaluate him for special education in October 2022, he is missing school and his grades are going down as a result of his disability.

The district stated that staff had been working with the parent to determine if he qualified for accommodations through Section 504 of the Rehabilitation Act and when the student was not found eligible the parent sought an initial special education evaluation to determine if he would qualify for services as a child with disabilities. In considering the August 2022 request for a special education IDEA evaluation the district examined the 2021-2022 school year school records such as grades, interview with past teachers, attendance, behavior incidents since the 2022-2023 school year had not started and a past psychological evaluation. Additional mental health records were sought and then the parent revoked consent for the district to obtain additional mental health records.

On October 14, 2022, the district reconsidered evaluating the student for special education eligibility based on student increased school tardies, behavior incidents and falling grades – behaviors they were seeing this school year but had not seen the previous school year. The district considers October 17, 2022 as the beginning date for conducting the evaluation and have planned to complete the evaluation steps as outlined in IDEA by December 16, 2022, within the timeline.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #446.

- The parent reported that she had initially been working with the district to secure accommodations through Section 504 of the Rehabilitation Act for her son and when he was not found eligible sought to ensure he receives services for his mental health disabilities that will help him to be successful in school.
- The parent requested an initial evaluation of her child on August 15, 2022.
- The school calendar for the district shows the first day of school was August 16, 2022
- The school psychologist received a Psychological Evaluation from the Therapy Center dated 11/18/21 from the parent pm August 22, 2022. The district

considered this report and reported the following considerations from the report shaped their decision to not conduct a special education evaluation

- The Educational History section on page 2 of the report stated that the student “had been able to maintain average to above average grades”
- The BASC results on page 5 of the report conclude the student exhibited primarily externalizing problems, noting that externalizing is more conduct disorder. They further note that internalizing behaviors are typically a red flag for emotional disabilities.
- Page 6 of the report recommended accommodations, such as increased time and taking short breaks as successful for the student.
- The report mentioned behavioral concerns occurring in the home, but the teachers and guidance counselor did not report behavioral or mental health concerns for the student based on his previous school year.
- The district received an Authorization of Disclosure for the Monarch Center (a mental health center), PreEts, the student’s therapist and vocational rehabilitation to secure outside documents on August 23, 2022 according to the Parent Teacher Contact Log to further investigate the mental health concerns.
- The parent revoked the Authorization of Disclosure and reported she will provide the documents herself to ensure that confidential information about the student is not unnecessarily shared.
- The district and parent discussed meeting on or around August 25, 2022 for the district to better understand the behavioral and mental health concerns the parent wanted evaluated. Emails show different dates, methods of meeting and attendees were discussed, however no documentation shows this meeting occurred.
- On August 29, 2022, the district provided a PWN refusing the request to conduct a special education evaluation. The refusal stated:

The team reviewed education records and agreed that a need for specialized instruction is not present. The student’s state

assessment and other test scores show that he continues to progress in general education. The team acknowledged a documented disability, through mental health documentation, but it does not present a need for specialized instruction at this time.

- The district reported falling grades and increasing behavior concerns. Based on ongoing conversations with the parents and these newly identified school concerns the district issued a PWN requesting consent to conduct an initial evaluation for special education and related services for the student on October 14, 2022 and the parent signed on October 14, 2022.
- The district reported that record review is complete, and testing is underway as of December 5, 2022.
- Mr. Ysusi reported on December 5, 2022 that the BASC, observation and interview will serve as evaluation for the Social/Emotional Status/Behavioral Status. The School Psychologist and teacher will provide the General Intelligence data for the evaluation; Mr. Ysusi just completed the Academic Performance evaluation, and student interview. Transition Skills is still planned, and Student Intervention Team data and observation data are still being collected.
- Mr. Ysusi reports that the district has begun to reach out to the parent to meet to discuss the evaluation findings
- Mr. Ysusi reports that the district is on track with the evaluation to meet with the parent by December 16, 2022
- The district response to the allegations state "As of 11/28/22 The school team still has 35 school days to complete the special education evaluation."

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) the initial evaluation is to be completed within the 60-school-day timeline. The 60-school-day timeline begins when the agency receives written parent consent to conduct the initial evaluation.

The PWN shows the parent granted consent for the special education evaluation on October 14, Consent and subsequently asked for an updated to the PWN. The PWN was revised and sent to the parent and the updated PWN parent approval was received on November 17, 2022. It is noted that the district and parent met December 16, 2022 to discuss the evaluation results, so the timeline was met.

Although a request was made for an evaluation earlier in August the request was refused by the district after review and consideration of mental health reports and a PWN was issued. As such, this earlier request is not a part of the timeline.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

ISSUE TWO: The USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to secure parent approval to conduct an evaluation for special education and related services.

Positions of the Parties

The complainant alleged that the district did not conduct the evaluation for special education within the timeframe (Issue 1). Due to the focus on getting services to the student quickly it was determined to investigate this allegation to determine if this step impeded the evaluation.

The district responded that prior to the parent's request for an initial special education evaluation she had sought Section 504 accommodations for the student. After ongoing discussions with the parent about mental health diagnoses a second PWN was provided to the parent on October 14, 2022 seeking consent to conduct an initial special education evaluation that was signed by the parent on October 14, 2022. Based on discussion about the PWN the October 14, 2022 PWN was again revised and parent signature was received on October 17, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #446.

- The findings of Issue 1 are incorporated herein by reference.
- A PWN was provided to the parent on October 14, 2022 asking consent to conduct an initial special education evaluation that was signed by the parent on October 14, 2022.
- The October 14, 2022 was amended based on parent request in a handwritten form to show acknowledgement and acceptance of the request. Consent for the revised PWN was received on November 17, 2022.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.300(a) and K.A.R. 91-40- 27(a)(1) the school must obtain informed consent from the parent of the child before conducting the evaluation. Further, parents must be provided procedural safeguards to help the family understand the process.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to secure parent approval to conduct an evaluation for special education and related services.

ISSUE THREE: The USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent input into the evaluation process.

Positions of the Parties

The complainant alleged that the district is not fully considering mental health documents provided to them in planning a “true” comprehensive evaluation, including the parent and other team members who want to participate to determine IF his behavior is in any way related to the mental health diagnoses. For consent to be proper, the parent must be fully informed of all evaluation procedures for which consent is being granted. A new prior written notice needs to be filled out with all updated areas of concern and specific methods of evaluation of the student.

The district responded that the parent consistently, not only provided input into the evaluation process, but the evaluation plan was also revised based on that input. The district acknowledged it did not create a completely new PWN based on the request of the parent, but instead updated the PWN in a handwritten form to show acknowledgement and acceptance of her request. This revised PWN was then provided to the parent and consent for it was received on November 17, 2022. The district reports they are evaluating in the areas the parent requested.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #446.

- The findings of Issue 1 and 2 are incorporated herein by reference.
- The parent requested an initial evaluation of her child on August 15, 2022.
- On August 16, 2022, the district began gathering information based on the August 15, 2022 parent request for an initial special education evaluation. The district response reports that an important part of gathering information to respond to the request was information about behavioral or mental health concerns as identified by the mother.
- The school psychologist received a Psychological Evaluation from the Therapy Center dated 11/18/21 from the parent on August 22, 2022.
- The district received an Authorization of Disclosure for the Monarch Center (a mental health center), PreEts, the student's therapist and vocational rehabilitation to secure outside documents on August 23, 2022 according to the Parent Teacher Contact Log to further investigate the mental health concerns.
- The parent revoked the Authorization of Disclosure and reported she will provide the documents herself to ensure that personal information about the student is not unnecessarily shared.
- The district and parent discussed meeting on or around August 25, 2022 for the district to better understand the behavioral and mental health concerns the parent wanted evaluated. Emails show different dates, methods of meeting and

attendees were discussed, however no documentation shows this meeting occurred.

- On August 29, 2022, the district provided a PWN refusing the request to conduct a special education evaluation. The refusal stated:

The team reviewed education records and agreed that a need for specialized instruction is not present. The student's state assessment and other test scores show that he continues to progress in general education. The team acknowledged a documented disability, through mental health documentation, but it does not present a need for specialized instruction at this time.

- The district reported the student's current teachers began to notice concerns. As a result, the district determined to evaluate the student at this time to see if his mental health disabilities were now impacting his education.
- The October 14, 2022 PWN listed review of existing data and new data to evaluate five areas (1. Social/Emotional Status/Behavioral Status; 2. General Intelligence, including Executive Functioning; 3. Academic Performance; 4. Transition Skills; and 5. Other inclusive of Classroom Observation, Observation Data and Student Interview).
- The parent provided the district additional mental health information on October 24, 2022.
- This written plan was shared with the parent and subsequently the PWN was updated in a handwritten form to include evaluation for executive functioning, transition, and possible autism spectrum disorder .
- An email from the parent on November 17, 2022 to the school psychologist, Ms. Allen states:

Sometime last week you and I had a conversation on the phone regarding additional areas of concern that were going to be addressed through the initial sped eval on the student. I wanted to make sure as a parent, I had mentioned them all, and request a revised PWN that adds them to the former reason for evaluation.

- The November 17, 2022 email from the parent to Ms. Allen specifically requests evaluation 1) to rule/out LD, 2) executive functioning, 3) autism spectrum

disorder, 4) observations to determine when he is sleeping to provide the medical doctors feedback for medication effects, and 5) transition.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.301 and K.A.R. 91-40-8 during the initial evaluation each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements: (1) The evaluation team shall review existing evaluation data on the child, including the following information: (A) evaluations and information provided by the parent of the child; (B) current classroom-based, local, and state assessments and classroom-based observations; and (C) observations by teachers and related services providers. (2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed.

Based on review of the documentation and interview during the investigation the district did review existing evaluation data which included A) information and evaluations provided by the parent of the child on several occasions. It is noted that they revised their evaluation plan based on the parent's information and recommendations from evaluations from diagnostic report from Four Winds. Further, the plan included B) review of course grades and Star assessments and completion of classroom assignments, C) observations by the student's current teachers, and then identified additional data needed with the parent's input.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to provide parent input into the evaluation process as outlined in 34 C.F.R. 300.301 and K.A.R. 91-40-8.

ISSUE FOUR: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), did not conduct a manifestation determination based on a series of short-term removals totaling more than 10 days for the student when the district had knowledge that a disability is suspected during the 2022-2023 school year.

Positions of the Parties

The complainant alleged the district is sending the student to ISS for excessive tardiness since the evaluation process began on October 18, 2022 including ones that were excused upon arriving at school. She contends the tardies are due to a new medication he has been prescribed for a medical diagnosis that may impact his education. Instead of being sent to ISS and missing more instruction she has repeatedly asked that the district be tolerant during the evaluation, and she be contacted so that she can work with the medical provider to adjust the dosage.

The district responded that the student has only been to ISS for 2 days since consent to evaluate was obtained. There is no need to conduct a manifestation determination at this point. In addition, there is no pattern of behavior evident.

Findings of the Investigation

- The findings of Issue 1, 2 and 3 are incorporated herein by reference.
- The district received consent for a special education evaluation on 14, 2022.
- The Behavior Detail Report shows from October 14, 2022 to November 28, 2022 when evidence was submitted for this investigation the following behaviors and discipline occurred, with a note as to whether short-term removals from school occurred that would change placement.

Date	Behavior	Discipline	Short-term removal?
11/3/22	Cell phone violation	1 day of ISS	No
11/4/22	Failure to comply	3 hrs. of FNS (Fright Night School) (after school hours)	No
11/15/22	Cumulative Tardies	1 day of ISS	No
11/16/22	Disruptive Behavior	Sent to Assistant Principal	No

School Communication Note dated November 7, 2022 at 4:10 p.m. documented a phone conversation between the parent and Special Education Director inquiring

about protections if the student is in ISS in regard to manifestation determination. The Special Education Director read to the parent directly from Chapter 13, page 203, and page 206 in the [Kansas] Process Handbook. The Special Education Director recorded that following clarification questions she asked the parent if she understood what she read, and it was recorded that she said yes.

Applicable Regulations and Conclusions

According to 34 CFR § 300.534(a) "A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge ... that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred."

In this case the special education evaluation is underway with parent consent, so the student is deemed a student with a disability under IDEA for discipline protection.

There are 2 days of ISS and no pattern of behavior. There is no need to conduct a manifestation determination at this point.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the student's disciplinary protections afforded by IDEA were 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)