

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #446

ON NOVEMBER 7, 2022

DATE OF REPORT DECEMBER 9, 2022

This report is in response to a complaint filed with our office on behalf of Student by her 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 7, 2022 and the 30-day timeline ends on December 9, 2022.

## Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on November 21, 2022 and the Director of Special Education, Ms. Emily McCambridge, Director of Special Education, USD #446 on November 21, 2022.

The Complaint Investigator also received emails from the parent and USD #446 between November 9, 2022 and December 1, 2022.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. A number of materials were related to a separate investigation regarding Section 504 and were not considered in this investigation. Other materials provided referred to past school years and were reviewed for context but not recorded as they were not considered in the investigation either. The following materials were used as the basis of the findings and conclusions of the investigation:

- List of Diagnostic and Statistical Manual of Mental Disorders – 5 (DSM-5) diagnoses for student, dated, July 22, 2021 from Four County Mental Health Inc.
- Email from Parent to Matt Ysusi, Assistant Director, Tri-County Special Education Interlocal 607 dated August 15, 2022 at 10:55 a.m.
- Email from Mr. Ysusi to Parent dated August 15, 2022 at 12:09 p.m.
- Email from Parent to Mr. Ysusi dated August 15, 2022 at 12:16 p.m.
- Star Diagnostic Report: Math, Test Date of August 18, 2022
- Star Diagnostic Report: Reading, Test Date of August 18, 2022
- Email from parent to Ms. Teresa Jefferson, Counselor, Independence High School dated August 23, 2022 at 2:40 p.m.
- Email from parent to Ms. Elizabeth Allen, School Psychologist, Tri-County Special Education Interlocal 607 dated August 23, 2022 at 2:49 p.m.
- Email from Mr. Ysusi to Mr. Kurt Seiler, Principal, Independence Schools, and Ms. Allen, on August 23, 2022 at 3:33 p.m.
- Email from parent to Ms. Allen dated August 23, 2022 at 4:33 p.m.
- Email from parent to Ms. Allen dated August 25, 2022 at 8:36 a.m.
- Email from parent to Ms. Allen dated August 25, 2022 at 8:56 a.m.
- Email from parent to Ms. Allen dated August 25, 2022 at 11:29 a.m.
- Email from Ms. Allen to Mr. Ysusi dated August 25, 2022 at 11:33 a.m.

- Authorization of Disclosures for PreETS Specialist - Amber McVey and Natasha Klutts, LCSW, signed by parent on August 23, 2022 with handwritten note stating "Revoked all on 8/25/22"
- Authorization of Disclosures for Four County Mental Health-Rachel Rhodes, unsigned with handwritten note stating "Revoked all on 8/25/22"
- Email from Ms. Jefferson to parent dated August 26, 2022 at 12:18 p.m.
- Email from Parent to Mr. Seiler dated August 26, 2022 at 12:43 p.m.
- Email from Mr. Seiler dated August 26, 2022 at 1:00 p.m.
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated August 29, 2022, mailed to the parent on August 30, 2022
- Email from Parent to Mr. Ysusi and Ms. Allen dated October 21, 2022 at 2:48 p.m.
- Email from Parent to Ms. Allen, Mr. Ysusi dated October 24, 2022 at 3:41 p.m.
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 1, 2022, mailed to the parent on November 1, 2022.
- Response to Child Complaint 23FC446-001 from #446 staff, dated November 17, 2022
- Semester 1 In-Progress grades report
- Behavior Detail Report, 22-23 High School
- Student Intervention Team Playbook, Independence High School, undated
- Independence High School 21-22, 22-23 Student Accommodations table, undated

### Background Information

This investigation involves a 10th grade student enrolled at Independence High School in USD #446. She also attended her 9<sup>th</sup> grade year at Independence High School in USD #446. She is not currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA). She has received accommodations for social emotional regulation through a Tier III intervention at the parent's request since ninth grade. Her mother reports the accommodations are for sensory issues associated with her medical diagnosis and disabilities.

She lives with her adoptive mother and brother. She has attended a number of schools during her school career but has been at Independence High School for the past two school years. She currently receives services through Four County Mental Health outside of school. Prior to attending Independence High School, she spent nine months at a psychiatric residential care facility and upon returning to home she finished her school semester attending virtual instruction. In spite of attending a number of schools she maintains good grades.

### 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 #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consider social/emotional status and sensory issues associated with her medical diagnosis when considering an evaluation for special education and related services during the 2022-2023 school year.

### Positions of the Parties

The complainant alleged that the district did not consider the student's mental health disability when refusing to evaluate her child for special education services. She alleged that the district did not look at their own files, which included a diagnostic document listing four DSM - 5 diagnoses that was shared with the district following a nine-month stay at a Psychiatric Residential Therapeutic Facility in considering whether to evaluate. She stated that the district only considered the students grades, disciplinary records and how many times she visited the counseling office as a basis for refusing the evaluation. Had they looked at the other information they would have reached a different conclusion and evaluated her for special education services for sensory issues and the impact of OCD within the school setting.

The district responded that when the parent initially requested an evaluation for special education in August, they began to consider the student according to a number of

areas to determine if an evaluation for special education and related services was indicated. Record reviews revealed the student's grades, and test scores were very good. They found she had had office discipline records due to cell phone use, but they report that it is typical to any student at her high school. No concerns had been brought to the Student Intervention Team (SIT) by present or previous teachers. The district responded that they did not have any records indicating mental health concerns. They reported they were working with the parent to obtain these. However, prior to receiving these documents the request for evaluation and information from outside agencies was withdrawn. They found that Tier III interventions were provided to the student as accommodations however the student rarely, if ever uses these accommodations. Further, she was not observed to have any social emotional or mental health concerns justifying a special education evaluation and issued a Prior Written Notice documenting that consideration. During the second request for an evaluation the district considered concerns about ADHD, generalized anxiety and PTSD along with the previous areas investigated and again did not find that her school performance and behavior warranted a special education evaluation for services.

### **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 and district agree the student has never received special education services nor been referred for special education in the past and that parent and district reported no educational concerns.
- One email describes a conversation between one of the student's teachers and the parent. In this email the teacher describes noticing some social emotional concerns, prompting her to look at the student file. She discovered that the student had previous concerns so contacted the parent to learn more. The parent provided the accommodations to the teacher.
- Documents show that on August 15, 2022 the parent emailed the Tri-County Special Education Interlocal 607 to make a request for a special education evaluation for the student with concerns related to the student receiving accommodations for mental health medical diagnoses.

- Emails document that the district offered the parent an opportunity to meet to share information and records related to her concerns and explained the district's IDEA responsibility for evaluation requests and timelines. The parent inquired about withdrawing consent to evaluation and the process was explained in the email.
- An email demonstrated that the parent notified the district about revising the requests for information needed for the special education evaluation so that unnecessary information would not be provided to the district. She further offered to re-sign revised Release of Information (ROI). The ROI demonstrates she had not signed the release that would reveal highly sensitive personal information.
- Three Authorization of Disclosure documents with copied notes stating, "Revoked all on 8/25/22", and interview show that on August 25, 2022 the parent revoked consent for release of records for outside agencies.
- An email from the parent states she would send the information from the outside agencies herself. Other documentation from the parent states,

...I have not yet received anything from the *mental health agency* and honestly was advised today that it is not my responsibility to get the information although I have attempted to do so via email, text, and phone calls since yesterday.

- On August 26, 2022 the parent wrote to the district in an email, "Upon further advisement, I am requesting to withdraw my special education evaluation for my 'child'".
- Documentation shows the district had a meeting scheduled with the parent to discuss the request for special education evaluation, but prior to that meeting the parent withdrew her request for the special education evaluation so the meeting was subsequently canceled.
- On August 29, 2022, the district responded to the parent's request and withdrawal of the special education evaluation with a PWN acknowledging the parent's withdrawal. The PWN further agreed in not evaluating her because she did not "display a need for specialized instruction" This document was mailed to the parent on August 30, 2022.

- Documentation and interview show that on October 21, 22 the parent made a second request for special education evaluation when other supports were not made available.
- The November 1, 2022 PWN documents a refusal for a special education evaluation based on

Parent has requested an initial evaluation of student due to concerns at school and mental health diagnoses including ADHD, generalized anxiety and PTSD. The student team is refusing to conduct an initial evaluation at this time. The school team relied on several points of data to make this determination. The school did receive mental health documentation from parent that included mental health diagnoses mentioned above. The school also reviewed district assessment data, current classroom performance and grades, and information from principals and school counselors. The *student's* current district assessment scores (Aug. 22) show that she scored in the 85th percentile in Math and the 72nd percentile in reading, both with a grade equivalency over the 12th grade level. Further, district assessment scores show progress in the general curriculum as evidence the *student* as she scored in the 53rd percentile in Reading in August 2021 and in the 63rd percentile in Dec. 2021. The same can be said for progress in the general curriculum in the area of math as evidenced by district assessment scores. In April of 22, the *student* scored in the 77th percentile and 85th percentile in August of 2022. Further, the team reviewed disciplinary data and information from the school counselors when looking at social emotional concerns brought forth by parent. The *student* has received two referrals for cell phone use and has elected to go to the counter office on a couple of occasions to talk or take a break from class this school year. Administration also expressed the *student* is doing well in

classes as she currently has 4 A's and 3 B's. After review of these materials, the school team does not feel that the *student* is in need of any specialized instruction or services and therefore is refusing to conduct the evaluation. Supports that the *student* may require are available to her and all students within the general school setting.

### **Applicable Regulations and Conclusions**

Federal regulations at 34 C.F.R. 300.305 state that as part of an initial evaluation the IEP and other qualified professionals must review existing evaluation data on the child including evaluations and information provided by the parents, current classroom-based local, or state assessment and classroom-based observations and observations by teachers to determine if any additional data are needed.

There were two requests for evaluation considered in this complaint.

The August 15, 2022 request for evaluation was withdrawn by the parent, but the district followed the IDEA guidance to consider the evaluation and documenting it in a Prior Written Notice on August 29, 2022 stating that "The team agreed with parent, and believes that student does not display a need for specialized instruction" based on team recommendations, parent input, and file review of records.

The second request for evaluation was made on October 24, 2022 by the parent. It is found that the district again followed procedure and expanded their previous consideration based on parents' specific concerns for ADHD, generalized anxiety and PTSD. Review of documentation and interview with the district found that the district met the requirements for evaluation by reviewing the effects of these concerns based on attendance, grades, district assessment and again found no concerns to warrant an evaluation for special education and related services.

Further, according to 34 C.F.R. 300.503 Written Notice must be provided to the parent proposing to initiate or refusing to evaluate the student along with a description and explanation why the district refused to evaluate. As well a description of the evaluation procedure, assessment, record, or report used for refusing the evaluation, a copy of

procedural safeguards, other options considered and why those options were rejected and any other relevant factors.

It is found that the August 29, 2022 Prior written Notice provided a description and explanation for rejecting the request to evaluate the student for special education based on a review of records, including grades, attendance, district assessment, discipline records, referrals to the SIT review committee, observations by classroom teachers, and review of records available to the district provided by the parent. It is documented that the district provided the parent procedural safeguards and listed one other option considered and why it was rejected.

It is further found that the November 1, 2022 Prior written Notice provided a description and explanation for rejecting the request to evaluate the student for special education based on district assessment scores, grades, office referrals, mental health documentation provided by the parent and information from administration. It is documented that the district again provided the parent procedural safeguards and listed one other option considered and why it was rejected.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to consider mental health issues in the parent's request for and evaluation for special education and related services.

### **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, 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)