REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #379

DATE OF REPORT March 30, 2023

This report is in response to a complaint filed with our office by the parent, parent of son, the student. The student will be referred to as “the student” in the remainder of this report. The parent will be referred to as “the parent.”

Investigation of Complaint

The investigators reviewed the complaint submitted on behalf of the student and reviewed the written response of the district. The district’s response was sent by e-mail on March 9, 2023, by Anita Breen, Director of Special Education at Twin Lakes Educational Cooperative.

Background Information

The relevant facts in this case are as follows:

1. The student is enrolled in Clay County Public Schools USD # 379 for the current school year. (2022/2023 school year)
2. February 2019, student is found eligible for special education as a 3-year-old.
3. The student’s primary exceptionality is categorized as a Developmental Delay in Social and Emotional Development.
4. August 8, 2022, the student transfers into Clay County Public Schools #379 from Geary County USD #475.
5. In August, Clay County Public Schools reviews the student’s IEP, and with parent consent, implements special education and related services.
6. The student’s IEP is behavior based with no academic support services.
7. November 8, 2022 – A manifestation determination review (MDR), regarding an incident that occurred on November 7, 2022, determines the student's conduct is not a manifestation of the student's disability. Included in the MDR documentation is the following:
a. Behaviors exhibited by the student on November 7, 2022, which led to the student’s suspension, is behavior the district found “represents a pattern of behavior”.

b. The student’s behavior included “aggressive behaviors in the general education and special education classroom including but not limited to: hitting, kicking, throwing rocks, eloping, yelling, cussing, verbal threats, destruction of property”.

c. The district notes that the student has a “history of disruptive/aggressive behaviors for attention-seeking and in desire to control play”.

d. The district notes that the student is making slow progress toward IEP goals.

e. The district notes the student has a record of numerous behaviors that subject the student to disciplinary action within the school year, consisting of 9 entries, resulted in no less than 16 days of in-school suspension (ISS) and out-of-school suspension (OSS), beginning on 9/1/2022 up until the incident on 11/07/2022.

8. Discipline records indicating that the student received a total of 28 days of ISS and OSS between September 1, 2022, and February 9, 2023.

9. January 23, 2023 – Email sent by district to the parent at 8:47 am, stating general education and special education service times (typical) and notes that psychological services will not be at the typical time but will be rescheduled for a later time (in the same day).

10. February 9, 2023 - Email sent from the district to the parent stating, “We are not required to give online services today since [the student] was here for ½ day” but “required IEP Zoom Services” will be provided on February 10, 2023.

11. February 10, 2023 – Email from the district to the parent stating there will be no school on February 13, 2023, that the student will be provided “services” through Zoom during the short-term suspension period (2-9-23 to 2-14-23), and that the parent can pick up an iPad at the district office.

12. February 10, 2023 – Email from the district stating that the student failed to join the scheduled zoom meeting for special education services on February 10, 2023, for both social work and SPED services time, and that the parent failed to pick up the iPad (laptop) and the SE worksheets (“The SE papers are the Social Emotional worksheets used during special education services).

13. February 13, 2023 – Email sent from the district to the parent again stating that the parent may pick up an iPad at the district office for use by the student to access special education services.

14. February 14, 2023 – February 15, 2023 – Email communication between the district and the parent discussing:
   a. The parent’s inability to pick up the iPad due to the district doors being locked (the parent claims to have been at the office at 8 am, on the 14th).
b. The district's response claiming the doors were unlocked no later than 7:56 am and people were inside.

c. A Zoom schedule for special education services to be provided February 14-16, 2023.
   i. March 10, 2023 – Email from the district stating that the doors were open at 7 am, a new security lock had recently been installed on the door, so the door required “a tug” to open, and that a secretary “motioned for [the parent] to come in”. (Email to investigators).

15. February 15, 2023 – Email from the parent indicating the student will miss special education services on February 15, 2023.

16. February 16, 2023 – Email from the district to the parent stating the Special Education Teacher would not be available to provide services on February 17, 2023.

17. February 20, 2023 – Email from the district reminding the parent that February 20 and 21, the district has meetings (about the student) and will not be able to provide special education services at the normal, scheduled, time on those days, but that services will be made up on February 22, 2023. (The parent responded that make-up time would not work)

18. February 20, 2023 – A PWN was provided to parent indicating:
   a. Beginning February 20, 2023, the special education services to be provided to the student, which are required in the IEP, and a schedule of days/times those services will be provided, through Zoom.
   b. Denial of the parent's request for academic/educational goals added to the IEP due to the student completing work above grade-level and no academic concern by the school team.

19. February 20, 2023 – Summary of the IEP Conference, which began at 1:00 pm and concluded at 1:58 pm, stating:
   a. How “regular education” will be provided. (The parent is to pick up a packet of work no later than 1 pm each Friday from the district office.)
   b. The student will have opportunities to ask questions and the district will daily provide with daily progress reports over Zoom about general education.
   c. An offer to provide free internet service in the home for the duration of the long-term suspension. (Parent declined).

20. February 20, 2023 – At the IEP Conference, the parent reported concerns about the student not having access to general education beginning February 9 – 20, 2023. The district offered to provide the missed work as a “make-up".(Parent declined).

21. February 21, 2023 – General education work is left at the district office for the parent to retrieve. (Email dated 2/22/23 indicated this)
22. February 22, 2023 – Email from the student's general education teacher to the student's school team stating that work was left at the district office on February 21, 2023, for the parent to pick up.
   a. Work for 2/10, 2/14, 2/15, 2/16, 2/17 was left at the office on 2/21/2023.
   b. Work for 2/20, 2/22, and 2/23 was left at the office on 2/20/2023.
   c. Pictures of work is taken and included in student file.
23. February 23, 2023 – Email from the district office to building principal that general education work is picked up by the parent.
24. February 23, 2023 – A list of general education lessons and assignments for February 10 through March 10, 2023, provided to the parent on February 23, 2023, as noted by the district.
25. February 26, 2023 – Email sent by the parent revoking consent for all special education and related services and withdrawing the student from the district. An inventory list of materials and technology the student will return to the school, includes general education materials.
26. February 27, 2023 – Letter from the district to the parent, stating that the district is “ready, willing, and able, to provide special education and related services in the IEP should [the student] decide to re-enroll”.
27. February 27, 2023 – A PWN from the district to the parent stating that beginning on February 27, 2023, the student will no longer receive special education services due to parent withdraw from the district.
28. Daily service suspension log stating special education services and general education offered/received/missed, with notes on student participation. (Log does not include general education offering until 2/22/23)
   a. 2/22/23 – Student in attendance for social work and SPED services.
      i. General education noted by the district; “work for the week of 2/13-17/23 provided at the SAC office” (paperwork/lessons).
29. March 15, 2023 – Phone interview with Director of Special Education for Twin Lakes Educational Cooperative clarifying:
   i. General education work offered to the parent as “make-up” work during the IEP Conference held on the 20th (Work for the week of 2/13 – 2/17) but was declined by the parent.
   ii. The district provided the work anyway to the district office for parent retrieval. Work was available at the district office on 2/20 and 2/21.
30. March 15, 2023 – Email sent to Investigators from the district clarifying that “online math and reading programs used by all students” were “provided though [the student’s] laptop, meaning the student “always had access to [the student’s] reading and math curriculum”.
31. March 20, 2023 – Phone conversation to clarify what reading and math programs were offered on the student’s laptop. As noted by district, reading and math programs were work-at-your-own pace programs, and while they “may have been assigned, they were not lessons or curriculum.”

a. The district further noted was that the student would not have had access to other general education subjects prior to the IEP conference.

b. Access to general education lessons was not provided because “work always came back undone anyway.”

**Issues**

In the complaint, the parent raises the following issue:

**Issue One:** Whether the student was provided general education curriculum during the student’s suspension, from February 9 – February 20, 2023.

**Analysis**

**Issue One:** Whether the student was provided general education curriculum during the student’s short-term suspension, from February 9 – February 20, 2023.

We find the district did fail to provide the student with general education during the period in question, specifically on 2/10, 2/14, 2/15, 2/16, 2/17, and 2/20, resulting in a violation.

Under federal and state special education law, when a student has reached the 11th cumulative day of suspension in a school-year, commencing on the 11th day of suspension, and during any subsequent day or days of suspension, “special education and related services must be provided” that “enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child’s IEP.” (K.A.R. 91-40-34(b)(2); 34 C.F.R. 300.530(d)(4))(emphasis added).

Further, a Free Appropriate Public Education, which includes special education and related services, provided at no cost to the parent, and in conformity with an individual education program, requires specially designed instruction, which in part, ensures “access of any child with a disability to the general education curriculum” so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children. ((K.A.R. 91-40-2(III)(2); (K.A.R. 91-40-1(z); 34 C.F.R. 300.17))(emphasis added).
OSEP guidance suggests that paperwork, without instruction similar to same age-peers, is not sufficient to ensure access of a student with a disability to the general education curriculum.

It is relevant, that when a student, who is not in-building, due to an OSS, or a student who is in-building, due to an ISS, has access to the general education curriculum on the day(s) that the general education curriculum was accessible to all students. Providing paperwork and lesson plans, even after the fact, especially when multiple days have transpired, is not a substitute for “access of any child with a disability to the general education curriculum”. Further, refusal, by a parent, to accept an accumulated amount of general education paperwork, all at once, does not negate a district's responsibility to have provided access to the general education in a timely manner and in an instructional way.

In this situation, the student began OSS on February 9, 2023, after an incident which occurred at the school. The parent was called to retrieve the student around 1 pm that same day. Due to the student being at the school for part of this day, the student, did receive general education instruction on this day. Therefore, we find no violation on February 9, 2023.

On February 10th the student was at home for OSS. The student did not have access to the general education curriculum. An email from the school to the district Special Education Director states the student's laptop (iPad) and social emotional worksheets were left at the district office. However, there is no mention of any general education curriculum left, nor any indication that the student was offered or access to general education curriculum and instruction. Therefore, on February 10th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 13th school was not in session. When school is not in session, general education curriculum is not offered to any child in the district for that day. When general education is not offered to any student, it is not required to be offered to a student simply because that student is eligible for special education. Therefore, on February 13th, 2023, we do not find a failure to provide the student with general education.

On February 14th the student was at home for OSS. On this day, the student's laptop was still at the district office and emails state the parent planned to retrieve it. However, there is a dispute as to whether the parent had access to the building. The parent claims the doors were locked and that individuals inside took no action to permit her entrance. On the other hand, the district claims that the doors were unlocked, but that a new
locking mechanism made the door more difficult to open. The district claims that the individuals inside the building “waved” the parent in. Regardless of access to the building, it is the district’s responsibility to ensure that a student receives FAPE, which includes access to the same general education curriculum and instruction provided to all students. In this case, even if the parent had retrieved the laptop, the student would still not have had access to the same general education curriculum and instruction similar to the student’s general education peers. While the district states that the laptop would have provided the student with access to “reading and math programs available to all students”, the district also confirmed that these programs are “not curriculum” and do not offer “lessons”. Further, the district acknowledged that the district did not provide general education to the student because even when they did “work always came back undone anyway.” Therefore, on February 14th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 15th the student was at home for OSS. There is no indication that the district provided any instruction for general education though Zoom or otherwise. Further, even though the laptop remained at the district office for most of the day, (the parent acknowledged that it was not retrieved until later in the afternoon), for reasons stated above, access to the laptop and programs on the laptop, would not have provided the student with access to the general education curriculum similar to the student’s same age peers. Therefore, on February 15th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 16th and 17th, the student was at home for OSS. For similar reasons as listed above, the student did not have access to the general education curriculum on either day. Therefore, on February 16th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 20th the student was at home for OSS. The district did leave general education curriculum paperwork and outlined lessons at the district office on this day for the days of 2/20, 2/21, and 2/22. According to the district, this was after the IEP conference on February 20th, 2023. Given that the IEP conference did not begin until 1:00 pm, and did not conclude until 1:58 pm, and given that the district still had to gather and then send the paperwork/lessons to the district office, and considering the lateness of the day in which all this would have had to occur, and because this still failed to provide instruction, we find that the student did not have access to the general education curriculum on February 20, 2023, similar to same aged peers. Therefore, on
February 20th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 21st, general education curriculum was dropped off for the dates of 2/10, 2/14, 2/15, 2/16, and 2/17 at the district office. During the IEP conference on February 20th, the parent voiced concern that the student had not received general education while in OSS. The district acknowledged the missing general education and responded, during the conference, with an offer to provide the missed work. The parent refused this offer. Despite the parent’s refusal, the district gathered the material and sent it to the district office on 2/21/23 where it remained. However, as stated earlier, a district has the responsibility to provide a student with access to general education curriculum similar to same aged peers, including access within a similar timeframe as same-aged peers, not after the fact. Further, the paperwork/lesson outlines did not include instruction similar to same aged peers.

In summary, we find that the district did violate state and federal law by failing to provide general education curriculum to the student for the dates of 2/10/2023, 2/14/2023, 2/15/2023, 2/16/2023, 2/17/2023, and 2/20/2023.

**Conclusion**

The allegation of a violation of federal and/or Kansas special education laws or regulations that the district failed to provide general education to the student during the suspension period is substantiated.

**Corrective Action**

Information gathered during this investigation has substantiated procedural noncompliance with special educational statutes and regulations. Violation(s) have occurred in the following areas:

Failure to provide general education instruction, similar to same aged peers, in accordance with federal and state laws for the days of 2/10/2023, 2/14/2023, 2/15/2023, 2/16/2023, 2/17/2023, and 2/20/2023.

Free Appropriate Public Education, which includes special education and related services, provided at no cost to the parent, and in conformity with an individual education program, requires specially designed instruction, which in part, ensures “access of any child with a disability to the general education curriculum,
so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children. (K.A.R. 91-40-2(III)(2); K.A.R. 91-40-1(z); 34 C.F.R. 300.17).

Based on the foregoing, USD #379 is directed to take the following actions:

1. Within 30 Calendar days of the date of this report, USD #379 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

2. Within 15 calendar days of the date of this report, submit to Special Education and Title Services the following:
   a. A written plan for how the district will provide general education instruction to students involved in any disciplinary action exceeding 10 cumulative or consecutive days. The plan must include general education instructional delivery model that is similar to general education instruction that non-identified and same-aged peers are to receive.

3. No later than April 15, 2023, USD #379 will submit documentation to Special Education and Title Services the following:
   a. Provide written correspondence to parent and propose compensatory general education instruction minutes that were missed as addressed in the findings of this complaint.
   b. Allow parent until April 20th, 2023, to respond to the proposed compensatory general education services either accepting all, part, or none of the proposal and submit her response to SETS.
      i. If parent fails to respond to proposal by April 20th, 2023, USD #379 has met its requirements for Corrective Action for #3.

4. Further, #379 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 within this report;
   b. A written request for an extension of time within which to complete on 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) as described below.
Right to Appeal

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

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)