

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #497
ON SEPTEMBER 20, 2023

DATE OF REPORT OCTOBER 25, 2023

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by her mother, ----- . In the remainder of the report ----- will be referred to as "the student." ----- will be referred to as "the complainant", "the mother", or "the parent".

The complaint is against USD #497 (Lawrence Public Schools). In the remainder of the report, this public agency may also be referred to as "the district", "the local education agency (LEA)", or "the school".

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on September 20, 2023 and the 30-day timeline ended on October 19, 2023; however, KSDE granted an extension until October 25, 2023 to allow for research of a proposed resolution from the LEA.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all evidence and documentation, which was provided by both the district and the complainant. The following documentation and information were used in consideration of the issue:

1. Email dated September 2, 2023 at 11:09 AM written by the complainant to Carolina Pierce, Special Education Teacher at Deerfield Elementary School
2. Email dated September 2, 2023 at 4:11 PM by Ms. Pierce to the complainant
3. Email dated September 7, 2023 at 3:36 PM written by the complainant to Joni Appleman, Principal of Deerfield Elementary School
4. Email dated September 11, 2023 at 10:55 PM written by Ms. Appleman to the complainant
5. Formal Complaint Request Form signed by the complainant on September 20, 2023
6. Email dated September 21, 2023 at 4:00 PM written by Shelia Smith, Assistant Director of Special Education to parents of students receiving speech/language services at Deerfield Elementary.
7. Email dated September 25, 2023 at 2:57 PM written by the complainant to Ms. Smith

8. Proposed Resolution to Complaint dated October 6, 2023 written by Ms. Smith
9. Individualized Education Program (IEP) for the student dated April 19, 2023
10. Interview with the complainant on October 13, 2023
11. Interview with Ms. Smith, on October 11 and October 16, 2023
12. IEP Goal Progress Reports dated October 18, 2023
13. Email dated October 18, 2023 at 5:50 PM written by Ms. Smith to the complaint investigator
14. Email dated October 19, 2023 at 8:53 AM written by Ms. Smith to the complaint investigator

Background Information

The student is currently enrolled in the third grade in USD #497 and attends Deerfield Elementary School. The student was most recently reevaluated on April 21, 2022 and was found eligible for special education and services under the exceptionality category of Developmental Delay.

The student began receiving early intervention services at the age of 20 months and transitioned to receiving early childhood special education services at age three in USD #497. The student has continuously received special education and related services during her school career in USD #497.

Issues Investigated

Based on the written complaint, only one issue was identified and investigated.

Issue One

USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing speech/language therapy and social work services during the 23-24 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.323(c)(2) requires school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Analysis: Findings of Fact

The parent reported that USD #497 has failed to provide the student with the required speech/language and social work services since the beginning of the school year.

The parent initially contacted Carolina Pierce, Special Education Teacher at Deerfield Elementary School, on September 2, 2023 via email asking about the provision of speech/language therapy and stating:

I also noticed that her current class hasn't been added to her 3rd grade section on her board - nor have her teachers been updated for her to be able to communicate to and about peers and staff relevant to her. Can we make sure this gets done as soon as possible? She tries to tell me about her friends and staff at home but has no way since the names haven't been updated.

Ms. Pierce responded back to the parent via email that same date indicating that no speech/language pathologist (SLP) or social worker had been hired to work at Deerfield Elementary School. She also stated:

I reached out to an SLP at another school and she met with me yesterday and taught me how to do it [update the names on the AAC device]. I anticipate it taking some time to add all the people so I was going to email you on Tuesday [September 5, 2023] to work on it (as I did not want to take it over a long weekend).

The parent sent another email on September 7, 2023 to Joni Appleman, Principal of Deerfield Elementary School stating:

I am preemptively requesting compensatory services for the student's speech . . . I understand there is a shortage of qualified social workers and speech pathologists in your district, this is felt state-wide, however, my child should not have to suffer the consequences for poor planning on the administrative side.

Ms. Appleman responded to the complainant via email on September 11, 2023 and stated:

I completely understand your concerns. We are watching the clock as well and will start services as soon as we have qualified staff to do so. At that time, the need for compensatory services will be determined.

USD #497 acknowledged that social work and speech/language services have not been provided to the student this school year. Shelia Smith, Assistant Director of Special Education, stated that the district "had not been able to secure through direct hire or contact agencies, a licensed speech language pathologist and social worker."

The IEPs in effect during the 2023-24 school dated April 21, 2023 includes three goals related to speech/language and social skills goals. In order for the student to achieve her IEP goals, the IEP requires 75 minutes per week of speech/language therapy in the special education setting, 25 minutes per week of speech/language therapy in the general education setting, and 20 minutes per month of speech/language therapy consult services with the student's

teachers. In addition, the IEP requires 20 minutes per week of social work services to be provided to the student.

An email was sent to the parents of all students receiving speech/language services at Deerfield Elementary on September 21, 2023. This email stated:

The district has not been able to provide speech language services at Deerfield this year. We have been working with several outside agencies, both locally and nationally, to hire a speech language pathologist (SLP). Unfortunately, despite various leads and potential candidates, we still have not been able to secure a licensed SLP.

We know that your student has speech-language services listed on their IEP, and we remain committed to fulfill our obligation to provide these services. While we continue to problem-solve our shortage of SLPs, we want to be clear that your student will be offered compensatory services. Once we have services in place, goals will be closely monitored and proposals made by the school team with recommendations for the compensatory services. You will be contacted with the recommendation, how these services might be provided, and to discuss if an IEP meeting is necessary.

We continue to actively recruit and will let you know when we have staff available to provide these services. The staff at Deerfield have been communicating any specific urgent student communication needs which we are addressing. For students who have IEPs or reevaluations that are due, so far, we have been able to secure limited SLP staffing to help with updating and completing annual IEPs and are striving to complete evaluations by their due dates.

We recognize this is a challenging situation and one that none of us want to be experiencing. Fulfilling these services has been and continues to be a priority for our district.

On September 24, 2023, the parent responded stating that she believed the lack of qualified speech-language pathologists and social workers was not the result of staff resigning their positions in an untimely manner. She stated:

The alarming number of staff flooding out of the district should send red flags to you and your staff about the overall atmosphere for educators in your school district. It is paramount, now more than ever, that specifically the special education department deeply examines why they are losing highly qualified and long-employed related services providers. Any educator knows that finding licensed, qualified, and reputable special education staff is unlikely to happen most of the way through September. From when the Deerfield speech-language pathologist's resignation was board approved, it has now been well over 5 months . . . The way the district has handled and continues to handle this situation is abysmal. Your disregard for your obligations to your most vulnerable populations is appalling. Special education is not a choice that does not have to be met, you are legally required to meet the agreements written in the IEP and yet you make excuses because you chose to not be aggressive with your hiring process and/or taking an uncomfortable look into your practices at the sped level.

Ms. Smith reported multiple ongoing attempts to hire both a speech/language pathologist and a social worker beginning in spring 2023 through the current date. She indicated that a plan to

monitor student progress and to provide interventions was developed and implemented. Ms. Smith stated:

. . . we have been in frequent communication with the special education team and principal at the student's building to check on whether there were any needs that needed a more urgent response. Based upon this, we did bring in another district SLP at the beginning of the year to work with this student's team, to help with the programming of her AAC device and provide the team with assistance in using the device. In addition, the case manager collaborated with the speech person on strategies for encouraging the student to use the device.

USD #497 reported a total of 60 minutes of AAC device consultation services were provided on behalf of the student during the 2023-24 school year as described above.

Ms. Smith reported the district has recently been able to fill the SLP vacancy at Deerfield Elementary School through a contracting agency. A paraeducator and a temporary virtual SLP have been hired to provide speech/language therapy beginning the week of October 9, 2023. During this time, the paraeducator will be temporarily supervised by an existing SLP in USD #497 who also works with virtual school students. These two staff will work together to build schedules, collaborate with staff and begin providing services. They will keep track of when services are provided and begin collecting data on student progress.

Then, beginning October 23, 2023, a different, newly contracted virtual SLP will begin working as the assigned 23-24 SLP for Deerfield. Ms. Smith stated:

This SLP will also be working remotely, and she will take over all SLP case management and service responsibilities. Her services will consist of working directly with students, direct supervision and observation of the SLP para providing services, as well as collaboration/consultation with staff.

Ms. Smith stated that the service delivery model will be for the virtual SLP to provide the 75 minutes per week of speech/language therapy to the student with the paraeducator providing the in-person supervision and interactions during these sessions. The paraeducator will provide the 25 minutes per week of speech/language therapy in the general education setting under the direction and supervision of the virtual SLP. The virtual SLP will also provide the 20 minutes per month of consultation to the student's Deerfield team.

The parent expressed concerns regarding the use of this service delivery model as the paraeducator is not a trained speech/language pathologist. She noted that the student did not progress well using virtual instruction during school closure during COVID. She also indicated that research shows this service delivery model is not effective for students with her daughter's medical diagnosis.

According to the Kansas State Department of Education (KSDE) Special Education Reimbursement Guide, a Speech Language Pathologist Para educator must be supervised a minimum of 10 percent of the time they are working with students (training time does not

count toward this minimum percentage) by a licensed speech-language pathologist. Speech Language pathologists are required to train, monitor, supervise, and evaluate para educators/assistants assigned to them. (KAR 28-61-8.)

Ms. Smith noted that the paraeducator is currently working on certification as a speech/language pathology assistant (SLP-A) and holds a bachelor's degree in speech/language, Ms, Smith also stated the district continues is continuing the on-going search for an in-person SLP for the district.

The LEA initially hired a new social worker in September; however, this person resigned after three days of employment. The LEA then reassigned social work staff throughout the district and a social worker began providing services at Deerfield Elementary School on October 16, 2023.

The first day of the 2023-24 school year was August 17, 2023. With social work services beginning the week of October 16, 2023, the student missed a total of eight weeks of services or a total of 160 minutes of social work services during the 2023-24 school year. With speech/language therapy services beginning the week of October 9, 2023, the student missed a total of seven weeks of services or a total of 525 minutes of speech/language therapy in the special education setting and 175 minutes per week of speech/language therapy in the general education setting.

In addition to these direct services, the student was to receive 20 minutes per month of speech/language consultation services for a total of 60 minutes for the months of August, September, and October, 2023. Documentation showed the student was provided the required 60 minutes of monthly speech/language consultation services, specifically related to the student's AAC device, at the beginning of the 2023-24 school year.

USD #497 collected data on the three goals related to speech/language and social skills once those services resumed in mid-October 2023 and reported the student was making adequate progress towards meeting her IEP goals

Conclusion

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require USD #497 to ensure that the special education and related services are made available to the child in accordance with the child's IEP. In this case, the social work and speech/language therapy services were not provided for between seven and eight weeks during the 2023-24 school year.

The Office of Special Education Programs (OSEP) in the Department of Education issued policy guidance on March 8, 2007 in Letter to Clark stating that local educational agencies (LEAs) are required to ensure that all children with disabilities receive a free appropriate public education (FAPE) consistent with their individualized education programs (IEP). General practice is that services missed because of student absences are not made up because the district was ready,

willing, and able to have provided the required special education and related services while services missed because of the absence of a provider are made up or provided by a qualified substitute.

OSEP further encouraged agencies to consider the impact of the absence of a child or provider on the child's progress toward meeting annual goals. OSEP stated that determination of whether an interruption in services constitutes a denial of FAPE must be made on a case-by-case basis.

In this case, the lack of services was caused by the absence of a provider, not the absence of the student. While the district has made ongoing efforts to hire qualified providers and provided 60 minutes of consultation services regarding the student's AAC device, the student missed a total of 160 minutes of social work services, 525 minutes of speech/language therapy in the special education setting and 175 minutes of speech/language therapy in the general education setting during the 2023-24 school year as required by the student's IEP.

Based on the foregoing, *it is substantiated* that USD #497 failed to implement the student's IEP, specifically regarding the provision of speech/language therapy and social work services during the 2023-24 school year.

USD #497 collected data on the social skills goal twice during the first quarter of the school year and collected data on the speech/language goals for approximately two weeks in order to complete the October 18, 2023 IEP goal progress reports. While this data indicated the student was making adequate progress towards her IEP goals, no findings related to the denial of FAPE can be made at this time because of the limited amount of available data on the long-term impact of the interruption of services caused by the absence of the providers on the student's progress toward meeting the annual IEP goals.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of federal regulations at 34 C.F.R. 300.300.323(c)(2) is substantiated because the district failed to provide the required speech/language therapy and social work services during the 2023-24 school year. Corrective action is required as follows:
 - a. CORRECTIVE ACTION:
 - i. USD #497 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will ensure that the special education and related services are made available to the child in accordance with the child's IEP.
 1. No later than November 25, 2023
 - ii. USD #497 shall reconvene the student's IEP team and will offer a minimum of 160 minutes of social work services, 525 minutes of speech/language therapy in the special education setting and 175 minutes per week of speech/language therapy in the general education setting as described in the April 21, 2023 IEP as compensatory services for failing to implement the student's IEP during the 2023-24 school year. USD #497 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.
 1. No later than December 15, 2023
 - iii. USD #497 shall reconvene the student's IEP team to review the data and IEP goal progress reports related to social work and speech/language therapy services at the end of the first semester in order to determine if the absence of providers impacted the provision of FAPE to the student during the 2023-24 school year. The IEP team will revise the IEP if the student is not making progress in order to provide FAPE to the student.
 1. No later than January 30, 2024

Investigator

Nancy Thomas

Nancy Thomas, M.Ed., Complaint Investigator

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).

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)