

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #305
ON AUGUST 12, 2024

DATE OF REPORT: SEPTEMBER 10, 2024

Summary of Conclusions/Corrective Action

This report is in response to a complaint filed with our office by ----- on behalf of her daughter, ----- . For the remainder of this report, ----- will be referred to as “the student.” --- ----- will be referred to as “the student’s mother.” USD #305 will be referred to as “the district.”

Investigation of Complaint

On August 13, 2024, the complaint investigator spoke via telephone with Sarah Loquist Berry, General Counsel for the Central Kansas Cooperative in Education (CKCIE). CKCIE provides services for special education for students who are enrolled in the district. On August 21, 2024, the investigator again spoke with the General Counsel via Zoom. Also participating in the call were Tiffany Lowe, Assistant Principal for the student’s school of residence and Brandi Duskie, Special Services Coordinator for the district.

The investigation of a formal complaint requires the investigator to contact the complainant in order to gather additional information and verify specific allegations of noncompliance that may be relevant to the investigation. To that end, the investigator left a voicemail message for the parent on August 16, 2024 asking the parent to call the investigator to discuss this complaint. On that same date, the investigator also sent an email to the parent providing contact information for the investigator. On August 28, 2024, the investigator spoke briefly by telephone with the parent who stated that she was a full time student and had been very busy since filing this complaint. The parent told the investigator that because of her busy schedule, she had not been able to contact the investigator. Further, at the time of the August 28, 2024 call from the investigator, the parent was unable to discuss the complaint but stated that she would contact the investigator later in the evening of August 28, 2024.

Having received no return call from the parent the preceding evening, the investigator sent the parent an email on August 29, 2024. In the email of August 29, 2024, the investigator again provided contact information and told the parent that – absent the presentation of additional information by the parent – the investigative findings would be based upon the information provided by the parent in her August 12, 2024 complaint as well as on information obtained from the district by the investigator.

The parent responded via email on August 30, 2024 stating that the email address used by the investigator (while used by the parent for the submission of her complaint) was for an account used only infrequently by the parent. The parent stated that she would be available to talk with the investigator after 3:00 PM on August 30, 2024 and asked the investigator to confirm availability for a call on an email account used more frequently by the parent. The investigator responded on that account telling the parent that the investigator could call at 3:30 PM if that time worked for the parent. The investigator asked the parent to let the investigator know if that time was not workable.

At 3:30 PM on August 30, 2024, the investigator placed another telephone call to the parent and, when the parent did not answer, left another voicemail message telling the parent that the investigator would be available for the next hour for a return call. The investigator also sent a text message with the same information. The parent did not return the call or respond to the text message.

In completing this investigation, the complaint investigator reviewed the following materials:

- IEP Progress Report for the student for the period of March 9, 2023 through December 19, 2023
- Section 504/ADA Student Services Plan dated April 17, 2023
- IEP for the student dated January 17, 2024
- IEP Progress Report for the student for the period of January 17, 2024 through May 18, 2024
- Grade Reports for the student covering school years 2021-22 through 2024-25
- District Board of Education Policies regarding Internal Transfers and Nonresident Enrollment dated March 2024
- Transfer and Nonresident Enrollment Information on the district website (<https://www.usd305.com/parents/resources/transfer-and-nonresident-enrollment-information>)

Background Information

This investigation involves a 17-year old girl who is enrolled in the 12th grade in her neighborhood high school. According to the student's current IEP, the parent has reported that the student has diagnoses of Depression and Anxiety as well as Ulcerative Colitis. The student also has been diagnosed with ADHD but refuses to take prescribed medication.

Medical issues have contributed to the student missing many days of school. During the student's freshman year (9th grade), she missed 34 days of school. During her sophomore year (10th grade), she was absent for over 42 days. During the student's junior year (11th grade), she missed 64 days of school. The majority of these absences were considered excused.

Under IEPs developed during the student's sophomore and junior years, she has been receiving special education support to address deficits in the area of math as well as identified needs with regard to the planning, organizing, initiating and completing of tasks. She has struggled with time management and maintaining attention to task. Her organizational needs have impacted her ability to keep class work together in a place where it can easily be located.

Since the last revision of the student's IEP on January 17, 2024, the student's needs have been addressed through the implementation of two annual goals and through the provision of 5 accommodations. According to that IEP,

- when given an assessment, the student would be provided with a separate, quiet, or individual setting within which to complete the assessment;
- assignments were to be presented one page at a time so that the instructor could check for understanding before moving on;
- the student would be given preferential seating whenever complete focus was required;
- when note-taking was required, the student would be provided fill-in-the-blank notes with a full copy of notes to supplement/fill in any missing material; and
- the student was allowed to use a calculator for completing math assignments or assessments (unless basic calculation skills were being assessed).

A Section 504/ADA Student Services Plan was developed for the student on April 17, 2023 while the student was in 10th grade. The student, the parent, a school counselor, the assistant principal, the student's case manager, and two instructors developed the plan to address needs associated with *"attendance due to health causes" – specifically the student's Ulcertive Colitis. That plan, which was in place throughout the student's 11th grade year, allowed the student to "use the school nurse as needed."* If the student missed school, she would be given additional time to make up missed assignments.

The plan also allowed the student to use an alternative setting in the school – the school office – rather than remaining in her classroom when she was fatigued. By report of the assistant principal, this accommodation was put in place to encourage the student to remain in school rather than going home when she didn't feel well. It was thought that the accommodation would help minimize missed assignments and lessen the impact of absences.

According to the assistant principal, the student was discouraged from coming to the office alternative setting during core content classes or during special education service time. Before coming to the office, the student was to first report to the nurse who would contact the parent to inform the parent that the student was reporting fatigue. If the student asked to remain in the office for an extended period (which could include core content or special education classes) because she felt she could not get comfortable using the beanbag chair available for her in the office, the parent was to be notified.

Issues

In her complaint, the parent asserts that the student was bullied throughout her sophomore and junior years which led to flare-ups of her colitis. The parent states that she requested a transfer of the student to another high school so that the student could escape ongoing bullying, but the district denied that request even though the student is receiving services under an IEP. The parent further contends that the student was not appropriately served under her 504 plan because it was not appropriate to isolate the student instead of protecting her from those students who bullied her.

Applicable Statutes and Regulations

Not every action taken by a school district with regard to a student who has been determined to be a student with an exceptionality is covered under special education law. Similarly, special education law does not address everything experienced by an exceptional student within a school setting. At K.A.R. 91-40-51, Kansas regulations state that, when filing a formal complaint, the complainant must allege that a violation of federal or state special education laws or regulations has occurred during the 12-month period preceding the date the complaint is received and filed with the commissioner of education.

In her written complaint, the parent presented several concerns, many of which are not eligible for investigation under this complaint process as they do not represent an allegation that the district violated state or federal special education legal requirements (K.A.R. 91-40-51(a)). Concerns focused on alleged bullying, for example, are not eligible for investigation through this process. Likewise, district transfer policies are not covered by special education laws. This investigator does not, therefore, have the authority to resolve these concerns. However, this complaint investigation can and must determine, based on the parent's complaint, whether these underlying concerns impacted the student's right to FAPE. (K.S.A. 72-3410(a)(2); K.A.R. 91-40-2, -51(a).) "FAPE" (free appropriate public education) is defined as special education and related services that are provided in conformity with an individualized education program (K.A.R. 91-40-1(z)).

In this complaint, the parent also alleges that an accommodation provided to the student under a Section 504 plan failed to properly address the student's needs. As stated in a letter to the parties dated August 12, 2024 from the Education Program Consultant for the Special Education and Title Services division of the Kansas State Department of Education,

"This complaint process may be used only for alleged violations of special education laws and regulations. There are times when an allegation may involve more than one law...[T]his complaint process will only address the special education process. Complaints regarding alleged violations of Section 504 must be presented to the Office for Civil Rights [OCR]..."

If the parent believes that the student's current Section 504 plan is not appropriately addressing the student's needs, the parent may file a complaint with OCR or she may request a meeting with the student's Section 504 team to discuss that plan.

Investigative Findings

Bullying:

The parent reports that the student has been bullied in classes and hallways during school time and outside of school by a former boyfriend and the girl that the former boyfriend was dating. According to the district, the student was on August 23, 2023 involved in an altercation off school grounds with the new girlfriend. According to the assistant principal, following that altercation the district made sure that the student did not have any classes with either the former boyfriend or his new girlfriend and kept the students separate during passing times and lunch periods.

The student's former boyfriend stopped attending school on September 27, 2023 and formally withdrew from school on November 27, 2023. The girlfriend also stopped attending the high school shortly after the off-school-grounds altercation with the student.

Neither the student's former boyfriend nor his current girlfriend are attending the student's high school of enrollment/residence for the 2024-25 school year. One of the students has graduated, and the other has dropped out of school with the intention of obtaining a GED.

Attendance records provided by the district show that the student spent part of 16 school days in the alternative setting (office) during the 2023-24 school year, first taking advantage of the accommodation on August 28, 2023. On the majority of these 16 days, the student left only one (on 8 days) or two (on 5 days) classes. The record shows that the student did not miss any special education classes on those 13 days. The student utilized the office accommodation on one day in each of the months of August and September. The accommodation was implemented on two days in each of the months of January, March, and April. The student went to the office on three days in November and five days in May. The student did not come to the office during the months of October, December, or February.

During the 2023-24 school year, the student did not attend school on 64 days. The attendance record shows that the student missed most or all of 42 school days due to illness and 13 additional whole or part days because of appointments. Family emergencies of out-of-town travel accounted for 6 additional days of absence.

For the 2024-25 school year, the student has enrolled in and has been attending the high school she has previously attended, having missed three days of the first week of school.

Transfer Request:

According to policies established by the Board of Education for the district last revised on October 13, 2020,

"A student shall enroll in his/her assigned attendance center except where a special assignment is granted or made. A lawful custodian or school administrator may request a pupil be assigned to a school other than the school indicated by the student's legal residence. Requests must be approved by the executive director of educational programs."

The student's legal residence will be construed to mean the abode or home where the legal guardian(s) resides except when the student is 18 years of age or older and is no longer dependent upon his/her family. Reasons for considering a special assignment are the following:

Additional conditions for special assignments include the following:

Health of Student: A statement prepared by a licensed physician must accompany the request for assignment. The statement must state explicitly the nature of the disability and why the desired school will be more beneficial to the student's health. Length of Assignment: Determined by the executive director of educational programs.

Administrative Recommendation: A building administrator or the executive director of educational programs may recommend the initiate a special assignment (sic) when there are substantial educational reasons to indicate that a change in schools may be in the best interest of the pupil. This includes matters of personal safety and/or emotional well-being. Length of assignment: For the current school year.

In March of 2024, the Board of Education for the district established additional specific policies regarding internal transfers. According to those policies, "the school that resident students are attending in 2023-2024 will be considered the student's attending school moving forward."

This student attended Central High School for the 2023-24 school year. At that time, the student also resided within the attendance boundaries of Central High School as she does currently. Although the student had been granted a transfer to attend a middle school outside of her residence area, she has been enrolled in Central High School since her sophomore year. According to district policies, if a student who has been granted a transfer chooses to return to their school of legal residence, "the student will not be eligible for a future transfer."

District policies state that "a transfer application will be required for the 2024-25 school year." Applications for transfer were made available online as of March 6, 2024 or could be requested at the district office. The number of available seats for each building was posted on the district website on March 6, 2024. According to district policies, "applications [would] only be accepted for buildings that have not exceeded school or grade-level capacity." According to the district website (<https://www.usd305.com/parents/resources/transfer-and-nonresidnet-enrollment-information>), there are no open seats at any grade level in the high school to which the parent has requested the student be allowed to transfer.

Applications for transfer were due by March 27, 2024 at 5:00 PM. According to policies, applications received after the deadline would not be accepted. Open seats would be filled through a drawing with a waiting list established should a seat become available at a later date.

No evidence was provided by the parent to show that a formal request for the transfer of the student was submitted by the March 27, 2024 deadline. In a Zoom call with the investigator

and others on August 21, 2024, the assistant principal reported that the parent did speak with the secretary for the Deputy Superintendent for the district about a transfer. According to the assistant principal, the parent was told that there were no openings at the requested high school. It was also reported that the parent made a verbal request for transfer for the student with the district's Curriculum Coordinator.

The assistant principal told the investigator that she met with the student and the parent on August 12, 2024. According to the assistant principal, the parent requested that the student be allowed to transfer to another high school to avoid the bullying that had triggered colitis flare-ups for the student during the 2023-24 school year. The assistant principal told the investigator during a Zoom conference call on August 21, 2024 that, until the parent informed her of the cause of flare-ups during the previous year, she had not been aware of any connection between alleged bullying and colitis flare-ups.

The assistant principal reported that during the August 12, 2024 meeting she asked the student why she wanted to transfer out of her high school of residence. According to the assistant principal, the student stated that she did not want to leave the school and preferred to graduate with the students she had been with since her sophomore year.

FAPE:

According to the IEP Progress Reports for the student, she made adequate progress toward attainment of all her annual goals for the first and second semester of the 2023-24 school year.

The IEP Progress Reports for the third and fourth quarter of the 2023-24 school year indicate that the student made progress – although minimal – toward attainment of her math goal. Progress was also made on attainment of her organizational goal during the third quarter of the school year, but the student failed to demonstrate adequate progress on this goal during the fourth quarter.

According to the student's grade report, she had, by the beginning of her senior year, earned 21 of the 24 credits needed for graduation despite having failed one class (Graphic Design 2D) during the first semester of her junior year as well as 3 of 7 credit courses during the second semester (English, Physical Science, and Study Skills).

No evidence was provided by the parent to show that the special education services required by the student under her current IEP are unavailable to the student in her high school of residence.

Summary and Conclusions

In her complaint, the parent alleged several issues which are not covered under special education laws. While this investigation cannot focus on these non-special education issues, this investigator must determine whether the actions of the district resulted in a denial of FAPE to the student.

The district followed its established policies when denying the request for the transfer of the student. No evidence was provided by the parent to show that the student's special education needs could not be addressed or were not being addressed in her building of residence, and that the denial of a transfer resulted in the loss of FAPE. Neither of the students whose alleged bullying behavior had, by report of the parent, triggered colitis flare-ups for the student were attending the student's school after the first few weeks of the 2023-24 school year, and neither are enrolled in the school for the 2024-25 school year.

No evidence was provided by the parent to show that it was the implementation of a Section 504 plan that led to the student's minimal progress toward attainment of annual goals or to the student's having failed a number of classes. On the contrary, the student was able to remain in school and attend the majority of her classes on days when the 504 plan's office accommodation was utilized. It appears far more likely that the student's complete absence from school for 64 days during the 2023-24 school year played a greater role in the student's progress or lack thereof.

A violation of special education statutes and regulations *is not established* on the issues presented in this complaint.

Corrective Action

Information gathered in the course of this investigation has not substantiated noncompliance with special education statutes and regulations on an issue presented in this complaint. Therefore, no corrective actions are warranted.



Diana Durkin

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)