

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229
ON DECEMBER 6, 2024

DATE OF REPORT: FEBRUARY 12, 2025

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” and ----- will be referred to as the “complainant”, the “parent”, or the “mother”.

The complaint is against USD #229 (Blue Valley Public Schools). In the remainder of the report, this responsible 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 60-day timeline to investigate a complaint from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on December 6, 2024; however, due to a technology glitch, the child complaint was not processed until January 16, 2025. The KSDE determined to allow an extension to the 60-day timeline but to have the investigation expedited to be completed as close as possible to the original due date of February 4, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the complainant and USD #229.

Interviews were conducted with both parties. The parent was interviewed by telephone on January 17, 2025 and again on January 28, 2025. USD #229 made the following staff available for an virtual Zoom interview on February 3, 2025:

Jimmie Cosby, Special Education Consultant for Intensive Resource Classrooms
Mikayla Dreyer, Board Certified Behavior Analyst (BCBA)
Mark Schmidt, Assistant Superintendent Special Education

The following written documentation was used in consideration of the issues:

1. Special Education Evaluation Report dated October 21, 2022
2. Parent Calendar dated October 2023 through July 2024 with handwritten notes
3. Individual Education Program (IEP) dated October 16, 2023
4. IEP Team Meeting Notes dated October 16, 2023
5. Positive Behavior Interventions and Support Plan dated October 16, 2023

6. Email exchange dated December 7 and 8, 2023 between the parent and Natalie Shepherd, Special Education Teacher
7. Prior Written Notice (PWN) for Reevaluation and Request for Consent dated December 12, 2023 for a functional behavioral assessment (FBA)
8. Email dated December 14, 2023 written by Kyle Braden, Assistant Principal, to the parent
9. Email dated February 1, 2024 written by the parent to Eric Remhold, Principal
10. Email dated February 1, 2024 written by the parent to the Special Education Teacher
11. Email dated February 2, 2024 written by the Special Education Teacher to the parent
12. Notes from February 13, 2024 Parent Meeting written by the Special Education Consultant for Intensive Resource Classrooms
13. Email dated February 20, 2024 written by the parent to the Assistant Principal
14. Email dated February 20, 2024 written by Mikayla Dreyer, Board Certified Behavior Analyst (BCBA), to the parent
15. Email dated February 20, 2024 written by the parent to Tonya Merrigan, Superintendent
16. Email exchange dated February 21 and 22, 2024 between the parent and the Assistant Principal
17. Email dated February 28, 2024 written by the parent to the Assistant Principal
18. Email dated February 28, 2024 written by the Special Education Teacher to the parent
19. Email dated March 6, 2024 written by the Assistant Principal to the parent
20. Email dated March 7, 2024 written by parent to the Superintendent
21. Email dated May 2, 2024 written by the parent to Christina Farquhar, School Resource Officer
22. Email dated January 25, 2025 written by the Assistant Principal to the Assistant Superintendent Special Education
23. Email dated January 28, 2025 written by the Principal to the Assistant Superintendent Special Education
24. Email dated January 30, 2025 written by the BCBA to the Assistant Superintendent Special Education
25. Response to the Allegations dated February 3, 2025 written by the Assistant Superintendent Special Education
26. Copy of Kansas Teaching License for Natalie Shepherd
27. Attendance record for the 2023-24 school year
28. Copy of the Student's Daily Schedule
29. Reinforcement List
30. Copy of Sensory Visual titled "Things to do when mad, upset, frustrated"
31. Copy of Sensory Visual titled "In Class"
32. Copy of Sensory Visual titled "Out of Class"
33. Copy of Sensory Visual titled "Sensory Choices"
34. Copy of Sensory Visual titled "My Body Needs"
35. Copies of Taylor Swift Token Reward Boards

Background Information

The student is a 14-year-old girl who is currently enrolled in the 7th grade at Leawood Middle School in USD #229 for the 2024-25 school year. The student has a medical diagnosis of Down's Syndrome. Her most recent reevaluation was conducted on October 21, 2022. At

that time, the student was found to continue to be eligible under the primary exceptionality category of Intellectual Disability and the secondary exceptionality category of Speech/Language Impairment.

The student initially received early intervention services until age three and early childhood special education services until age 5 in the state of Texas. The student has attended USD #229 since kindergarten with an IEP in place to provide special education and related services. At the beginning of the 6th grade, the student transferred to the Prairie Star Middle School for the 2023-24 school year. After a disciplinary incident involving the School Resource Officer in February 2024, the parent requested an in-district transfer for the student to attend Leawood Middle School. This request was granted and the student transferred to the new building on March 19, 2024.

Issues Investigated

Based on the written complaint and an interview with the complainant, three issues were identified and investigated.

It is noted that the IDEA only allows child complaint investigations to consider allegations that have occurred within the preceding 12 months from the date of the filing of the allegations. In this case the allegations were filed with the KSDE on December 6, 2024 and, as such, the investigation window started on December 6, 2023.

It is further noted that the parent only made allegations regarding issues that occurred when the student was enrolled at Prairie Star Middle School during the 2023-24 school year. The parent reported she believes USD #229 is in compliance with the requirements of the IDEA with the special education program provided at Leawood Middle School subsequent to her in-district transfer which occurred on March 19, 2024.

Issue One

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to employ an appropriately certified special education teacher to provide special education services to the student between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

Applicable Law

Federal regulations at 34 C.F.R. 300.156 require that each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators.

In Kansas, special education teachers must meet the requirements outlined in the "Special Education Reimbursement Guide State Categorical Aid". Appendix B contains a chart which describes the various classroom assignments and the required licensure requirements for each setting. Teachers who hold the appropriate licensure for their teaching assignment are considered to be adequately prepared and trained in the state of Kansas.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The parent believes the special education teacher, Natalie Shepherd, was not appropriately licensed for teaching the student during the 2023-24 school year. The parent reported the student started having behavioral problems and did not like going to school once she transferred into Ms. Shepherd's classroom at Prairie Star Middle School. She indicated the situation became so bad that the student was placed on medication. However, the parent noted once the student transferred to Leawood Middle School in mid-March 2024, the student's behavior dramatically improved.

USD #229 assigned the student to a low incidence special education classroom at Prairie Star Middle School for the 2023-24 school year. Ms. Shepherd was assigned as the special education teacher and special education case manager for the student's classroom. Documentation showed that she held a valid Limited Apprentice License to teach special education (PreK-12), and an Emergency Substitute License between the dates of December 6, 2023 and March 18, 2024.

Appendix B in the "Special Education Reimbursement Guide State Categorical Aid" requires a teaching license with an endorsement in any of the following areas for the teacher to be considered adequately prepared and trained for an assignment in a low incidence classroom: Low Incidence; Functional; Intellectually Disabled – Functional; Severely Multiply Handicapped; Intellectually Disabled; or Elementary Ed. Unified. Appendix B also allows for substitutes to fill a teaching assignment in a low incidence classroom.

USD #229 stated:

In the spring of 2023 the district needed to fill 10 low incidence teaching vacancies. Unfortunately, we were not able to fill all of these with teachers holding low incidence licenses. Rather, as with many other districts in Kansas, we identified individuals who had other teaching licences and relevant experience to fill in as long-term substitutes. In Natalie's case, she was hired as a teacher with the expectation she earns the low incidence license or move to a high incidence position (which she did in fall 2024). The alternative was to place a sub teacher with no experience in special education. Please note that Natalie has lots of support from Jimmie Cosby, special education consultant (instruction), and Mikayla Dreyer, BCBA (behavior) to ensure sound instructional practices.

In the case of Natalie Shepherd, she was qualified to fill this position with her emergency sub license, later earning her high incidence Limited Apprenticeship License. Either of those licenses qualified her for the position. In addition, she had served as a long-term substitute in a low incidence elementary classroom for the previous school year.

Conclusion

Federal and state regulations require that each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. In Kansas, the requirements for a special education teacher to be considered appropriately and adequately prepared and trained are found in Appendix B of the "Special Education Reimbursement Guide State Categorical Aid".

In this case, interviews and documentation found that between the dates of December 6, 2023 and March 18, 2024, Ms. Shepherd was assigned as the case manager and special education teacher in a low incidence classroom where the student was assigned.

During that timeframe, Ms. Shepherd had a valid Limited Apprentice License to teach special education (PreK-12), and an Emergency Substitute License. Either of those licenses allow for Ms. Shepherd to serve as a substitute in a low incidence classroom, when a teacher with a low incidence license is not available.

Based on the foregoing, the district is found to be *IN compliance* for this issue.

Issue Two

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavior intervention plan (BIP), which resulted in the student being removed from the classroom setting for more than 20 minutes between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

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.

Federal regulations at 34 C.F.R. 300.300.324(a)(2)(i) requires the IEP team to consider the use of positive behavioral interventions and supports, and other strategies, to address any behavior that impedes the learning of the student or that of others.

Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review.

The parent reported that the student's IEP was not implemented while the student attended Prairie Star Middle School during the 2023-24 school year. The parent noted that the student's attendance was often coded as yellow for class periods during the school year indicating an "undetermined absence" from that particular class period. During these "undetermined absences", the parent reported the student was secluded in the special education classroom due to behavioral issues as a result of staff not implementing the BIP and thus preventing the inappropriate behavior from happening in the first place. The parent believes that the yellow "undetermined absences" resulted in the student being denied access to general education on December 12, 2023; January 23 and 29; February 1, 2, 5, 6, 20, and 28; and March 4 and 6, 2024.

The parent indicated that the student's IEP included a behavior intervention plan (BIP) which contained a number of positive supports and strategies which were not being provided. This lack of implementation resulted in the student exhibiting inappropriate behavior during the school day which culminated in the student being removed from her general education classroom setting for greater than 20 minutes at a time and secluded in the special education setting. The parent reported the student was traumatized, felt unsafe, and became unwilling to go to school as the result of the seclusion.

The parent reported that this lack of implementation also resulted in the student being medicated and ultimately led to a situation in February 2024 when the school resource officer was required to intervene and the parent was forced to request a transfer for the student to attend a different middle school within the district. The parent noted that the student has not displayed the same types of inappropriate behavior since transferring to Leawood Middle School in March 2024 and is no longer taking medication.

The IEP in effect between December 6, 2023 and March 18, 2024 was developed on October 16, 2023. The IEP notes that the student's behavior does impede her learning and that of others. The IEP states,

The student occasionally demonstrates avoidance and attention seeking behaviors including: avoiding non-preferred tasks, throwing materials, drawing on herself with markers/ink, and hiding under tables. The student also periodically demonstrates unexpected behaviors interfering with others including: messing with / taking other student's materials, hitting, and kicking. Hitting/kicking/other physical behaviors are very rare.

The IEP includes a BIP which describes the positive behavioral interventions and supports that are needed to support the student throughout the school day. These include visual support such as visual schedules and timers; reinforcement for appropriate behavior based on student preferences; and sensory input including fidgets and sensory breaks. The BIP also describes prompting and instructional strategies such as giving choices, priming the student for transitions, sandwiching more difficult tasks between two easier tasks, etc.

The Present Level of Academic and Functional Performance (PLAAFP) also describes the environmental supports required to support the student's appropriate behavior including an alternate work space, and peer mentoring.

During an interview, the BCBA and the Special Education Consultant for Intensive Resource Classrooms noted that the student transferred from the elementary school setting to the middle school setting at the beginning of the 2023-24 school year which involved new staff, new peers, and a new schedule which involved class changes for each period of the school day. Both staff reported the student had a difficult time adjusting to these changes and there was an escalation in the student's inappropriate behaviors when the student transferred to Prairie Star Middle School. Both staff indicated they consulted with and provided extra support to the Special Education Teacher. They stated that the district proposed a functional behavior assessment (FBA) and the parent provided written consent for the FBA on December 12, 2023. These staff noted that they continue to work with the student at her new school of attendance, Leawood Middle School and have seen a significant decrease in inappropriate behaviors since the transfer.

USD #229 provided copies of a variety of visuals showing a variety of sensory choices the student could make when feeling dysregulated. During the interview, school staff described how these visuals were used in the school setting to provide the student with options when her behavior began to escalate.

School staff also reported and documentation showed that a student specific reinforcement list was created with at least two options for each sensory modality for the student to choose from during daily scheduled sensory breaks. In addition, a reinforcement system was established where the student earned a puzzle piece to complete a Taylor Swift picture of her choice each school day for exhibiting appropriate classroom behavior.

The Present Level of Academic and Functional Performance (PLAAFP) states, *"It is best when the student has a behavior to allow her some time by herself so that she can calm down and apologize for her actions."*

The District's Response to the Allegations states,

The district acknowledges that the student's behaviors were at times disruptive to the educational environment and interfered with her ability to learn alongside peers in general education classrooms. These behaviors were a known aspect of her disability that were acknowledged and interventions identified in the student's IEP dated 10/16/2023.

The summary of present levels of academic achievement and functional performance, includes a section on behavior. The section notes that "(i)t is best when the student has a behavior to allow her sometime by herself so that she can calm down and apologize for her actions." As it is impossible to "(provide) time by herself" in a classroom with 20+ peers, this accommodation would occur in the special education classroom.

An email written by the Special Education Teacher to the parent dated February 2, 2024 describes the interventions provided on February 1, 2024, one of the days when the student's attendance was coded yellow for "undisclosed absence" for her Social Studies and Science classes. The email states,

I was absent on Wednesday, so I was not present for the behavior that occurred on that day. I was told yesterday morning that she had a rough Social Studies on Wednesday. Yesterday Allie told the student that it was time to head to Science and she refused to leave the IR room until Murphy, her peer mentor, came before she would go to class. So, there was a lot of non-compliance. Mrs. Gabel has been out all week sick and with the refusal to leave IR with a sub in class we decided to work in IR [Intensive Resource Room] for Science and have her peer mentor come to IR room to work with her. After science was over, she refused to go to Social Studies wanting to wait on peers again, but we were able to get her to begin social studies work in IR room, her peers then showed up and worked with the student on her work for the remainder of her day. She has done this a few times this week, wanting to wait for her peers before going to class. She actually worked pretty well in IR and was able to get her work done with no issues and earn her end of day activities, it was just refusal to leave IR room. To end her day on a good note and not escalate her further we let her be by herself and allowed her to calm herself on her own, which she did and began work in IR for her end of day. Today she will be in class. If that changes, I will email you an update. Please let me know if you have any other questions.

Conclusion

In this case, the student's IEP and BIP required a number of sensory accommodations and environmental supports to assist the student in demonstrating appropriate behavior in the school setting. Interviews and documentation show that the student displayed an increase in inappropriate behavior upon enrollment in the sixth grade at Prairie Star Middle School.

However, It is also noted that the student experienced a significant transition from a familiar elementary school building to a new middle school setting at the beginning of the 2023-24 school year. On October 16, 2023, the IEP team determined that the student's behavior impeded her learning and the learning of others and developed a BIP to address the behavior. Documentation and interview show that the student continued to exhibit these behaviors and the district responded by providing additional consultation and support for the Special Education Teacher from the BCBA and the Special Education Consultant for Intensive Resource Classrooms.

Interviews and documentation found evidence to support a finding that the sensory accommodations and environmental supports described in the student's IEP and BIP dated October 16, 2023 were available to the student while enrolled at Prairie Star Middle School between the dates of December 6, 2023 and March 18, 2024.

Based on the foregoing, USD 229 is found to be ***IN compliance*** in regards to this issue.

Issue Three

USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the sensory accommodations including breaks, between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School.

Applicable Law

Federal regulations at 34 C.F.R. 300.300.323(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.

Federal regulations at 34 C.F.R. 300.300.324(a)(2)(i) requires the IEP team to consider the use of positive behavioral interventions and supports, and other strategies, to address any behavior that impedes the learning of the student or that of others.

Analysis: Findings of Fact

The findings of Issue Two are incorporated herein by reference.

The parent believes the student was not allowed to take the required sensory breaks while attending Prairie Star Middle School which resulted in the student becoming dysregulated and displaying inappropriate behavior in the school setting.

The October 16, 2023 IEP and BIP includes an accommodation for "sensory breaks – as needed".

Interviews and documentation showed the BCBA consulted with the Special Education Teacher and incorporated scheduled sensory breaks into the student's schedules beginning in January 2024.

Interviews and documentation show that an IEP Team Meeting was held on February 13, 2024 to discuss the parent's concerns regarding the sensory breaks. Attending the meeting were the Special Education Teacher; the BCBA; the Special Education Consultant for Intensive Resource Classrooms; the Principal; Emily LaBelle, the Regular Education Teacher; the parent; and Yvette Nguyen, the family advocate.

The notes from this meeting document that the team discussed parent concerns regarding the sensory breaks. It was reported that currently there were three sensory breaks built into the student's daily school schedule. However, it was reported that the student had been resistant to take these breaks because she preferred to be with her peers. It was suggested to allow the student to invite a peer to join her for the sensory breaks.

The notes also reflect that the parent disagreed with the student being assigned to lunch detention for pulling a peer's hair and arm and that she does not want the student to be secluded. The notes state, "Mom said her trust is broken".

An email dated February 21, 2024 written by the Assistant Principal to the parent states,

9:20-9:30, 1:45-2:00, and 2:45-3:00 are her scheduled break times. In addition to those, she has flex from 8:49-9:14 in which she typically has the opportunity to read, color, or play games with peers and lunch from 12:40-1:05.

Johnnea [the Occupational Therapist] completed a preference inventory with the student earlier in the year which identified that the student prefers tangible items such as silly putty, stickers, and coloring books, movement such as swing, spinning, and running, and miscellaneous items such as board games and listening to music. That is not the full list (just a representation) but we've utilized that list for options during break times. Additionally, Johnnea has completed the sensory profile for the student and is looking at those results for specific recommendations.

During the interview with the BCBA and the Special Education Consultant for Intensive Resource Classrooms, both staff indicated they had observed the student taking both her scheduled and “as needed” breaks in multiple informal observations in the classroom setting at Prairie Star Middle School.

Conclusion

In this case, the student’s IEP and BIP required the student to take sensory breaks on an as needed basis. After the student’s inappropriate behavior increased during the first semester, the BCBA consulted with the Special Education Teacher and developed a schedule for the student to take three scheduled sensory breaks throughout the school day. Based upon the documentation and interviews with school staff, evidence supports a finding that the student was provided with sensory breaks, both scheduled and “as needed”.

Based on the foregoing, USD 229 is found to be *IN compliance* in regards to this issue.

Summary of Conclusions/Corrective Action

ISSUE ONE: Interviews and documentation support a finding that the district did employ an appropriately certified special education teacher to provide special education services to the student between December 6, 2023 and March 18, 2024 while enrolled at Prairie Star Middle School. Based on the foregoing, no corrective action is required.

ISSUE TWO: Interviews and documentation support a finding that the district did implement the student’s IEP, specifically the behavior intervention plan (BIP). In this case, the student was removed from the classroom setting for more than 20 minutes on several occasions between December 6, 2023 and March 18, 2024 in order to allow her to use the sensory strategies to regulate herself prior to returning to the general education classroom. The IEP states, “It is best when the student has a behavior to allow her some time by herself so that she can calm down and

apologize for her actions." Based on the foregoing, no corrective action is required.

ISSUE THREE: Interviews and documentation support a finding that the district did implement the student's IEP and BIP which require sensory breaks "as needed". In this case, the student was provided with both scheduled and "as needed" sensory breaks between December 6, 2023 and March 18, 2024. Based on the foregoing, no corrective action is required.

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.gov. 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)