

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #320
ON FEBRUARY 10, 2025

DATE OF REPORT: MARCH 17, 2025

This report is in response to a complaint filed with the Kansas State Department of Education on behalf of ----- by his 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 #320 (Wamego Public Schools) who contracts with the Special Services Cooperative to provide special education services to students enrolled in the school district. In the remainder of the report, both of these responsible public agencies may also be referred to as “the district”, “the local education agency (LEA)”, or “the school”. Individually, they will be referred to by “USD #320” and “the Cooperative” respectively.

The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint and allow for an appeal process 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 February 10, 2025.

Evidence Reviewed

During the investigation, the Complaint Investigator, Nancy Thomas, reviewed all the documentation provided by both the complainant and USD #320.

Interviews were conducted with both parties. The parent was interviewed by telephone on February 15, 2025 and provided additional information and clarifications via email during the investigation.

A telephone interview was held on March 4, 2025 with Erica Bammes, Special Education Director; Carol Hay, School Psychologist; and Brad Couture, Principal. In addition, a telephone interview was held on March 7, 2025 with Kim Marquardt, Special Education Teacher, and Jana Schmidt, In-School Suspension Supervisor.

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

1. Individual Education Program (IEP) and Behavior Intervention Plan (BIP) dated October 2, 2023
2. Email dated September 4, 2024 written to all of the student’s general education teachers by Brad Couture, Principal of Wamego Middle School

3. IEP and BIP dated September 30, 2024
4. Email dated October 4, 2024 written to the parent by Jacque Colgrove, Middle School Math Teacher
5. Email dated October 7, 2024 written to the parent by Kim Marquardt, Special Education Teacher with an IEP dated May 9, 2024 for student KJA attached
6. Email dated October 15, 2024 written to the parent by the Special Education Teacher
7. Recording of October 22, 2024 phone call between parent; the Principal; and Carol Hay, School Psychologist; (note: all parties acknowledged being recorded)
8. Email dated October 22, 2024 written to the parent by the Principal
9. Email exchange dated October 29, 2024 between the parent, the Special Education Teacher, and Scott Nading, Mental Health Therapist
10. Email dated October 30, 2024 written to the parent by the Special Education Teacher
11. Email dated November 15, 2024 written to the parent by the Special Education Teacher
12. Email dated November 20, 2024 written to the parent by the Principal
13. Neuropsychological Report dated December 31, 2024 written by Dr. Christine Durrett, Board Certified Clinical Neuropsychologist, at the Flint Hills Neuropsychology
14. Email exchange dated January 15, 2025 between the parent and the Special Education Teacher
15. Email dated January 29, 2025 written to the parent by Brittany Lakin, Math Teacher
16. Discipline Log dated August 13, 2024 through February 5, 2025
17. List of unexcused tardies to classes dates between October 14, 2024 through February 11, 2025
18. LEA Self-Assessment Interview Questions and Answers
19. LEA Response to the Allegations dated February 21, 2025 written by Erica Bammes, Director of Special Education
20. Email dated March 5, 2025 written to the Investigator by the Principal

Background Information

The student is an 11-year-old boy who is currently enrolled in the 6th grade at Wamego Middle School in USD #320 for the 2024-25 school year. It is noted that the student transferred from an elementary school within the district at the beginning of this school year with an IEP in effect.

The student has a history of medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), anxiety, and Post-Traumatic Stress Disorder (PTSD). His most recent neuropsychological evaluation conducted on December 31, 2024 noted diagnoses of ADHD and Disruptive Mood Regulation Disorder (DMRD).

The student was initially evaluated for special education services during the fourth grade in USD #320. At that time, he was found eligible for special education and related services due to meeting the exceptionality category of Other Health impaired. A reevaluation was conducted with additional assessment on September 30, 2025 while the student was attending Wamego

Middle School. At that time, the student was found to continue to be eligible under the exceptionality category of Other Health Impaired.

Issues Investigated

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

Issue One

USD #320, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to protect personally identifiable information (PII) when it shared a copy of another student's IEP with the parent on October 7, 2024.

Applicable Law

Federal regulations at 34 C.F.R. 300.123 which require public agencies in the State to protect the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA.

Analysis: Findings of Fact

After requesting a copy of the student's IEP, the parent alleged that the Special Education Teacher emailed her a copy of another student's IEP on October 7, 2024. The parent was concerned that she received confidential information about another student as well as was concerned that confidential information about her student had been shared with another parent.

USD #320 acknowledged the district was out of compliance with the IDEA in regards to the IDEA requirements for Issue One. The district proposed a resolution to address the noncompliance to the KSDE and the KSDE accepted the proposed corrective action plan. As such, no findings of fact will be made in this report.

Conclusion

As a result of the district's self-assessment and *acknowledgement of noncompliance* USD #320 proposed a resolution to the KSDE for correcting the noncompliance. KSDE accepted the proposed corrective action plan and notified both parties on March 10, 2025.

Issue Two

USD #320, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures when suspending the student during the 2024-25 school year.

Applicable Law

Federal regulations at 34 C.F.R. 300.530 require specific procedures to be followed when a student with a disability or suspected of having a disability are subject to a disciplinary change of placement as a result of a violation of the student code of conduct.

Federal regulations at 34 C.F.R. 300.536(a) define a disciplinary change of placement as occurring when a student's educational placement has been changed for more than 10 consecutive school days or for more than 10 cumulative school days when a pattern exists due to disciplinary action resulting from a violation of the student code of conduct.

Analysis: Findings of Fact

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

The parent alleged the student has been suspended for more than 10 school days during this school year through a combination of out-of-school suspensions (OSS) and in-school suspensions (ISS). The parent believes these suspensions have been for behaviors that are directly related to the student's disability. The parent also reported that the School Psychologist and Principal informed her during a phone call on the morning of October 22, 2024 that a manifestation determination meeting needed to be held.

Disciplinary records show and interviews confirmed that the student received a total of five days of OSS on the following dates during the 2024-25 school year: September 9, September 10, October 3, October 4, and October 7.

Disciplinary records show and interviews confirmed that the student received a total of eight days of ISS on the following dates during the 2024-25 school year: August 21, September 4, September 5, September 6, October 31, November 1, November 20, and November 21.

The Disciplinary Log documents the behavior which resulted in the ISS and OSS included harassment, physical aggression, and noncompliance/classroom disruption.

USD #320 staff reported that the district's practice is for ISS to be served in the Adverse Child Experience (ACE) classroom under the supervision of the ISS Teacher. This is considered a general education setting as the classroom serves students both with and without disabilities. The curriculum in the ACE classroom provided by the general education teachers who consult with the ISS Teacher for providing individual instruction on each lesson and providing assignments for each assigned student. The district provided an email dated September 4, 2024 written by the Principal to all of the student's general education teachers which supported this practice.

The ISS Teacher and the Special Education Teacher indicated that whenever a student with an IEP is assigned to ISS, they meet at the beginning of the school day to plan for providing the specialized instruction and supports required by the IEP for that particular student and they meet again at lunch to monitor progress.

While no documentation was provided, the ISS Teacher and the Special Education Teacher reported that the student was provided access to the general education curriculum and received his accommodations and special education support as required by the IEP during the eight days he served in ISS during the first semester.

USD #320 staff noted and documentation showed the student has not received either ISS or OSS due to any disciplinary actions since the Thanksgiving Break in November 2024. However, the student has been sent to the office for verbal warnings and reteaching of expectations by the Principal on December 12, 2024 and January 13, 27, and 29 and February 5, 2025 for behaviors related to disrespect and use of inappropriate language and behavior.

The School Psychologist and Principal acknowledged that they mistakenly told the parent that a manifestation determination meeting needed to be held during the phone call on October 22, 2024. The Principal reported that he corrected this statement in an email to the parent later that same day and requested the parent to call him so he could explain.

Conclusion

An educational change of placement as a result of disciplinary action occurs when a student does not receive the special education and related services required by the IEP as a result of disciplinary action resulting from a violation of a student code of conduct for either more than 10 consecutive school days or 10 cumulative school days when a pattern exists.

It is noted that an educational change of placement can occur during an in-school suspension as well as during an out-of-school suspension for the purposes of 34 C.F.R. 300.530. In the Analysis of Comments and Changes accompanying the Part B regulations at 71 Fed. Reg. 46715 (Aug. 14, 2006), the Department explained:

It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in 34 C.F.R. 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general education curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement.

In this case, interviews and documentation found that the student received a total of 14 days of suspension as a result of disciplinary action taken as a result of violations to the student code of conduct during the 2024-25 school year to date. Of these 14 days, eight were served through ISS where it appears the student continued to receive the required special education services and supports and access to the general education curriculum and his peers. The other five days were served through OSS and are considered to be an educational change of placement as a result of disciplinary action because the student did not receive the required special education services and supports during the OSS days.

Based on the foregoing, the district was not required to follow any special procedures at this time as the student had not been subject to an educational change of placement of more than

10 consecutive or 10 cumulative school days with a pattern. As such, USD #320 *is found to be IN compliance* in regards to this issue.

Issue Three

USD #320, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP and behavior intervention plan (BIP), specifically by not providing support staff, during the 2024-25 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 alleged that the student's IEP requires that he be supervised in unstructured settings. She believes this has not occurred during the 2024-25 school year and, as a result, has displayed the impulsive behaviors associated with his disability which caused the student to violate the student code of conduct and be disciplined with multiple ISS and OSS. In addition, the student's IEP was updated in October 2024 to provide supervision during passing times between classes. However, this support has also not been provided on a regular basis as demonstrated by the student being tardy to class on multiple occasions.

The findings of Issue Two are incorporated herein by reference.

Documentation and interview found there were two IEPs in effect during the 2024-25 school year. The first IEP was developed on October 23, 2023 and required 45 minutes per day of specialized instruction provided in the special education setting; 45 minutes per day of paraprofessional support in the physical education class; and 75 minutes per day of paraprofessional support in the core classes taught in the general education setting. A Behavior Intervention Plan (BIP) was also included which required several accommodations including the use of a daily behavior chart and reward system. The second IEP was developed on September 30, 2024 and continued the same special education services and BIP as required by the previous IEP. In addition, this IEP requires 28 minutes per day of supervision during passing times between classes.

While both IEPs and BIPs include statements indicating the student has difficulty handling unstructured settings, there is nothing specifically requiring supervision in all unstructured settings in either the October 2, 2023 IEP and BIP or the September 30, 2024 IEP and BIP.

School staff stated that a schedule was developed to provide the student with the special education services and supports required by the October 23, 2023 IEP beginning on the first day of the 2024-25 school year. When the IEP was reviewed and revised on September 30,

2024, school staff noted that a schedule was developed to provide the extra support for each of the four-minute time periods between each class allowed for passing time.

The Cooperative acknowledged there is currently a staffing shortage of five paraprofessionals at Wamego Middle School. On-going efforts to fill these vacancies include advertising job openings, participating in community job fairs, and conducting budget reviews to explore options for increasing pay to support recruitment and retention efforts.

In the interim, the LEA has implemented efforts to mitigate the impact of the staff shortage on students. The Special Education Director stated:

Building-level special education staff prioritize support for students with the highest needs, including this student. While efforts to hire additional paraprofessionals are ongoing, the building is utilizing other staff members to provide attendant care support when paraprofessionals are unavailable. General education teachers, special education teachers, counselors, and office staff are assisting with hallway supervision and escorting the student between classes. There is a specific plan in place to secure hallway coverage for this student.

The parent provided a list of dates the student has been tardy during the second semester prior to the filing of the child complaint. These dates include January 23, 24, 27, 28, 31, and February 3, 5, and 10, 2025.

USD #320 noted that their practice is to excuse the student's classroom tardy if he arrives late to a class with a staff member. School staff acknowledged the student has been tardy to class and this is because the student does not always wait to be escorted in the hallway between classes. He will dart and run away from staff when they are attempting to provide supervision in the hallway and often does not respond to re-direction in the hallway. Staff also noted that he will be observed to enter the assigned classroom but then leaves and is tardy when he returns back to the assigned classroom. Staff acknowledged that there are times when the assigned staff person is unavailable to provide the escort and an effort is made to find a substitute; however, this is not always feasible and, in those situations, the general education teachers assigned to hall duty monitor the student from their posts in the hallway along the route to the student's next class.

The district provided a copy of an ABC (Antecedent / Behavior / Consequences) Chart dated between October 29, 2024 and February 9, 2025 showing 14 days of observations. The consequences reported did not show any type of reward system for appropriate behavior.

Conclusion

In this case, the student's IEP dated September 30, 2024 requires 28 minutes per day of supervision in the hallway between classes. The Cooperative acknowledged that there is currently a staffing shortage of five paraprofessionals at Wamego Middle School and, despite the LEA's efforts to provide the hallway supervision by utilizing multiple staff members including office staff, teachers, and administration staff, the student is not always supervised in the hallway as evidenced by the student receiving tardies to his classes on at least eight school

days between January 23 and February 5, 2025. In addition, there is no evidence that the daily behavior chart and reward system required by the BIP has been implemented during the 2024-25 school year.

Based on Interviews and documentation, there is evidence to support a finding that **the LEA is OUT of compliance** for this issue.

Issue Four

USD #320, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student with the opportunity to participate in non-academic and extracurricular activities, specifically the field trip to Central Elementary School to be a reading buddy on October 29, 2024.

Applicable Law

Federal regulations, at 34 C.F.R. 300.107 require public agencies to provide students with disabilities with an equal opportunity to participate in nonacademic and extracurricular services and activities. Nonacademic and extracurricular services and activities may include¹ counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency², referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency² and assistance in making outside employment available.

¹ <https://www.law.cornell.edu/definitions/> Include

Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

² <https://www.law.cornell.edu/definitions/> Public agency

Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

Analysis: Findings of Fact

The findings of Issue Two and Three are incorporated herein by reference.

The parent reported the student was denied the opportunity to participate in the field trip to Central Elementary School to be a reading buddy on October 29, 2024 because there was not enough staff available to provide supervision. The parent believes the district denied the student the opportunity to participate in this extra-curricular activity due to his disability. An email dated October 29, 2024 written by the parent to the Special Education Teacher stated:

... The student came home today disappointed that he did not get to go to Central today with all the 6th graders, because there wasn't enough staff to go with him. He also said that it was said to him to let this be a lesson that that he needs to behave to do fun things like field trips. I feel like he was treated completely unfair. He should get the same opportunity that the other kids get and para or teacher support should be there if needed.

USD #320 acknowledged that selected students from the student's sixth grade English/Language Arts class went to Central Elementary School to read to younger students on October 29, 2024. This is an extension of the curriculum where students pre-read books and prepare activities to implement with one or two assigned elementary students. The Special Education Teacher reported that the student was not the only 6th grade student who remained in class instead of participating in the reading buddy class activity that day.

The Special Education Teacher acknowledged that the building was short-staffed for paraprofessional support on the day of the class activity but that was not the primary reason the student did not participate as a reading buddy. An email dated October 29, 2024 written by the Special Education Teacher to the Principal stated:

If a student has behaviors, such as what Aiden demonstrated previously and then this morning where he cannot keep his hands to himself, I don't feel comfortable sending him with other students in a separate building when I don't have a body to be with him 1:1. His behavior this morning proved that provided time alone without adult supervision, even when that time frame is a 3 minute period, he cannot make the appropriate choices. I did not have the bodies to be able to send with him, being that we were down 3 paras, and when students have had behaviors in the past they either cannot go if not covered, or depending on the behaviors they may not go to the event at all, even to the simple extent that it was today at Central.

An email dated October 30, 2024 written by the Special Education Teacher to the parent stated:

The student is correct, he was not able to go. It is true that we are short-staffed, and I had a conversation with the teacher the student was walking with where that was mentioned. However, he was not the only 6th-grade student who stayed back. The reason I did not feel comfortable with him attending was that the event was more unstructured, and we are still working on preparing him for these type of activities. Additionally, there was an incident that morning between the student and another student.

The Principal reported that the criteria for being able to participate in this class activity was no disciplinary actions for ten days prior to the date of the activity. Based on the student's disciplinary history and an incident that occurred the morning of the activity, the Principal reported that he made the determination that the student did not meet the criteria to participate in the class activity on October 29, 2024 and therefore, the student remained in class at the building with the other students who did not participate in the class activity at Central Elementary School.

School staff reported that the student has subsequently been eligible to participate and has participated in other school activities including attending after-school volleyball and basketball games as well as being a reading buddy at Central Elementary School on March 3, 2025.

Conclusion

The district reported that the criteria to be able to participate in the class activity on October 29, 2024 was no disciplinary incidents for 10 days prior to the activity. Interviews and documentation show that, prior to the date of the activity, the student's last disciplinary action was on October 7, 2024; however, the student had an altercation with another student on the morning of October 29, 2024 and was therefore ineligible to participate in the class activity. It is noted that there were other 6th grade students who were also not eligible to participate and remained in class the day of the activity.

Based on the foregoing, the district is *found to be IN compliance* for providing the student with the opportunity to participate in nonacademic and extracurricular activities.

Summary of Conclusions/Corrective Action

ISSUE ONE: USD #320 acknowledged noncompliance with federal regulations at 34 C.F.R. 300.123 which require public agencies in the State to protect the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA. USD #320 proposed a corrective action plan to address the noncompliance which was accepted by the KSDE on March 10, 2025. Based on the foregoing, the district is determined to be IN compliance with the requirements of the IDEA and no corrective action is required.

ISSUE TWO: Interviews and documentation support a finding that the district was not required to follow any special procedures based on disciplinary actions assigned to the student during the 2024-25 school year because the student has not been suspended for more than 10 consecutive or 10 cumulative school days with a pattern during the 2024-25 school year. Based on the foregoing, the district is determined to be IN compliance with the requirements of the IDEA and no corrective action is required.

ISSUE THREE: Interviews and documentation support a finding that the district did not consistently implement the student's IEP for providing 28 minutes per day of supervision in the hallway between classes nor and BIP for implementing a daily behavior chart and reward system. Based on the foregoing, the district is determined to be OUT of compliance with the requirements of the IDEA for implementing the IEP as written and corrective action is required.

a. **CORRECTIVE ACTION:**

- i. The LEA will review its practices to ensure that the student receives the required 28 minutes per day of supervision in the hallway between classes as required by the IEP. This plan must include both the hallway supervisor and the general education classroom teachers. The current supervision plan will be reviewed and revised as necessary and shared with all relevant staff no later than five school days from the date of this report.
- ii. A daily log will be maintained to document that the supervision is being provided in the hallway and that the student remains in the classroom and is

not unsupervised in the hallways between classes no later than six school days from the date of this report.

- iii. The Cooperative will train any non-certified staff including, but not limited to, paraprofessionals and office staff assigned to the hallway supervision on strategies for managing the student's behavior prior to supervising the student.
- iv. The LEA will create the daily behavior chart and reward system as required by the BIP and train all relevant staff on how to implement and monitor the behavior chart and reward system within five school days of the date of this report.
- v. The LEA will implement the daily behavior chart and reward system no later than six school days from the date of this report. The chart will be reviewed weekly and revised as necessary to ensure that it addresses the student's needs effectively.
- vi. No later than 10 days after the last day of the 2024-25 school year, the LEA will provide the KSDE with a copy of the Hallway Supervision Log, the Daily Behavior Chart, the student's Daily Attendance Record, and the district's 2024-25 school calendar to document that the requirements of the IEP and BIP were met on each day the student attended school starting six school days from the date of this report.

ISSUE FOUR: Interviews and documentation support a finding that the district did provide the student with the same opportunity to participate in the class activity on October 29, 2024 as was provided to other 6th grade students. In this case, there were eligibility criteria in place and the Principal determined that the student, as well as other students, did not meet the eligibility criteria to participate in this particular event. It is noted that the student has subsequently been eligible for participation and has participated in nonacademic and extracurricular activities for 6th grade students held in the district. Based on the foregoing, the district is determined to be IN compliance with the requirements of the IDEA and 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)