

Complaint Decision 18-050C

March 20, 2018

James N. Hecimovich, Superintendent
Kingsland ISD 2137-01
705 Section Avenue
Spring Valley, MN 55975-1500

Dear Superintendent Hecimovich and [REDACTED]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [REDACTED] (Complainant) brought on behalf of [REDACTED] (Student), a student attending school in Kingsland Independent School District 2137-01 (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after January 19, 2017, one year prior to the date the complaint was received. The independent investigation included:

- An opportunity for the District to respond to the complaint.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- An onsite visit.
- Discussions with the Complainant and District Staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated January 24, 2018. The District provided a written response to the complaint on February 7, 2018. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue 1

The Complainant alleges the District failed to provide the Student's special education and related services in conformity with the individualized education program (IEP) during the 2017-18 school year. Specifically, the District did not provide the following: the individualized health plan (IHP); progress reporting; seating in the front of the classroom; monitoring Student [REDACTED] in physical education; breaking down material

into simple, concrete pieces of information; [REDACTED]; and using [REDACTED] markers on the white board and Smartboard.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school within the District during the time period covered by this complaint.
2. The Student's most recent special education evaluation is dated April 18, 2016. The Student was found eligible for special education and related services with a primary disability area of [REDACTED], and a secondary disability area of [REDACTED].
3. Student was in [REDACTED] grade during the 2017-18 school year.
4. The Student's IEP in effect at the beginning of the 2017-18 school year, is dated March 16, 2017 (March 2017 IEP).
5. On November 10, 2017, the Complainant signed her consent to a revised IEP (November 2017 IEP).
6. Complainant reported that she agreed to the November 2017 IEP, but that Staff was not implementing the items listed above, in either the Student's March 2017 or November 2017 IEPs during the 2017-18 school year.

[REDACTED]

7. The Student's March 2017 IEP included the following regarding the Student's IHP:

A health plan will be on file in the school building and special education classroom with [Student's] emergency plan and medication information and procedures. Staff that work with and around [Student] will each receive a copy of [Student's] health plan including emergency procedures. The special education teacher will create the health plan with [Student's] family and medical records or input from health care providers, as implemented by the special education teacher.

8. The Student's IHP stated in the relevant parts the following:

...

[REDACTED]

- 9. The Complainant alleged that during one school day in September 2017, Student left his general education classroom [REDACTED]. The Complainant learned of the incident when the Student told her after school.
- 10. The classroom teacher acknowledged that the incident occurred and indicated she did not know it had happened until she was told later by another adult. She stated the incident had occurred when many students were coming and going from the classroom, and it had not been unusual for Student to leave at that time. The Student had not told any adults [REDACTED] and Staff in the classroom had not noticed any signs [REDACTED] prior to the incident.
- 11. When interviewed, the Student's classroom teacher could not recall the Student's IHP in place at the beginning of the year as part of the March 2017 IEP.
- 12. The District special education director acknowledged that Staff, with the exception of the special education teacher and some special education paraprofessionals, were not aware of the IHP which was

part of the March 2017 IEP. The special education director stated that special education Staff had noticed it was outdated and determined to revise it at the beginning of the year, which was why the Student's classroom teacher was not familiar with the IHP.

13. The Student's November 2017 IEP did not reference an IHP, but did include the following plan to address the Student's health concerns going forward:

[Student's] relevant health information will be provided to the case manager by the parent(s). This information will be shared with all school staff that need to know, to ensure his health needs are met. The case manager will be responsible for distributing information and obtaining a receipt of acknowledgement from staff.

A call to [Student's] parents will be made by the case manager (or a designee in the case manager's absence) should [Student] experience [REDACTED]

- [REDACTED].
14. The decision to no longer reference an IHP in the Student's November 2017 IEP was based on an October 26, 2017 note from the Student's physician that stated: "[Student] is actually [in] excellent clinical condition at this time. . . Procedures and techniques used would be no different for [Student] than for anyone else."
 15. As part of its response, the District submitted a copy of the one-page relevant health information summary, which included an outline of actions Staff could take [REDACTED]
[REDACTED].
 16. Staff indicated that when they revised the Student's IEP in November of 2017 and created the relevant health information summary, they ensured that the Student would need to talk to an adult before going to the restroom [REDACTED]. Staff indicated this would ensure that an adult was aware and could follow emergency procedures as needed.
 17. No other significant health incidents were reported by Complainant or Staff as occurring during the 2017-18 school year.
 18. Staff, including the Student's classroom teacher, reported when interviewed that they were aware of the relevant health information summary and demonstrated that they knew what plan was in place following the November 2017 IEP.

Progress Reports

19. Both the Student's March 2017 IEP and November 2017 IEP included substantially similar language regarding the frequency of progress reporting. Specifically, the IEPs provided: "Progress will be reported [four] times per year, as often as general education peers, in written quarterly reports, in addition to the annual IEP."

20. Both the Student's March 2017 IEP and November 2017 IEP included four annual goals: a reading goal, mathematics goal, a handwriting and typing goal, and a [REDACTED] skills goal.
21. The District reported on the Student's progress toward the reading and mathematics goals in April 2017, May 2017, and October 2017. All progress reports state the Student was making adequate progress toward his goals and objectives.
22. The District reported on the Student's progress toward the handwriting and typing goal and the [REDACTED] goal in May 2017 and October 2017. Both progress reports indicate the Student was making adequate progress toward his goals and objectives.
23. During the 2016-17 school year, the Student received As and Bs in all his coursework.
24. Staff reported progress reports were mailed home to parents.
25. The District provided a progress report dated January 18, 2018 for the November 2017 IEP. The progress report indicated the Student was making adequate progress toward all IEP goals and objectives.
26. For the first semester of the 2017-18 school year, the Student received two Ds and two Cs in his core general education curriculum courses, one B in Music, and three As (one in Project Lead the Way, a science, technology, engineering, and math [STEM] course, one in Band, and one in physical education [PE]).
27. Staff reported they believed Student was making individual progress during the 2017-18 school year. Staff stated that the increase in classroom rigor in [REDACTED] grade may be impacting his grades, as well as the Student's tendency to rush. Staff reported they were aware of these concerns and attempting to slow the Student down by [REDACTED] working with him individually.

Seating in the front of the classroom

28. Both the Student's March 2017 IEP and November 2017 IEPs included the following substantially similar language regarding the Student's seating requirements:

Due to [Student's] distractibility, he will be seated at the front of the room close to instruction in all classes. The general education teacher will be responsible for this.

...

29. The Complainant reported, "My understanding [] would be when they say seated at the front of the class, this to me would mean the front row."
30. When interviewed, the Student's case manager stated she told Staff that the front of the classroom usually meant the front two rows near the instruction. She also stated that the Student was to be seated

so that the center of the classroom was on his right, not the teachers' right, [REDACTED].

31. Based on interviews and written statements submitted with the District's response, the general education Staff varied in their seating for the Student. For example, the general education classroom teacher indicated he was seated at the back left of the classroom for a week before the Student was moved to the front of the classroom. The social studies teacher indicated he was seated in a different position for about a month before he was moved to the front of the class. Another teacher indicated he did not have a traditional seating arrangement because he did not instruct the students in a traditional manner. Instead, the coursework was mostly group work and online curriculum using the iPad.

Monitoring [REDACTED] in Physical Education

32. Both the Student's March 2017 IEP and November 2017 IEP included the following regarding PE:

When [Student] is in [PE], his PE teacher will monitor [Student] [REDACTED]
[REDACTED]
[REDACTED]

33. The Complainant alleged: "I did sit in on a physical education class of [Student]; and not once did the teacher ask if he was ok [REDACTED]."
34. The PE teacher credibly reported with the District response the following: "I have been and continue to monitor [Student] [REDACTED] . . . [Student also knows] that when in PE class if he was feeling [REDACTED] he could slow down or stop the activity as he needed."
35. When interviewed, the PE teacher indicated that he encourages all students in his class to listen to their bodies and that there are many built in breaks throughout class. When asked if the Student needed to sit out frequently, he stated, "It hardly ever happens. [Student] can usually take a break and come right back."

Break down material

36. The Student's March 2017 IEP and November 2017 IEP included the following substantially similar language regarding how to modify the Student's assignments:

"Due to [Student] having difficulty with following multi-task directions, all staff in all classes, will break down material, to be completed into simple, concrete pieces of information on classroom assignments. This will be done in every class and general education teachers will be responsible for this."

37. The Student's classroom teacher submitted an example of a modified mathematics assignment as part of the District response. [REDACTED]

When interviewed, the classroom teacher stated she speaks frequently with the Student's case manager

about breaking down assignments, and gave an additional example of crossing off choices for the Student when given multiple choice questions.

38. The Student's social studies teacher stated that the majority of assignments were read [REDACTED] in class, but there were not many modifications for classroom worksheets.
39. Other teachers reported not noticing that they needed to break down material or instructions for the Student, or that the nature of the work presented was already broken down into simple steps for all students. These teachers indicated they did not notice any additional distractibility on the part of the Student that would require them to further break down material and that he was progressing in class.

- [REDACTED]
40. The Student's March 2017 IEP included the following regarding [REDACTED] for the Student:

"[REDACTED] y. The general education teacher will be responsible for this."

41. The Students' November 2017 IEP included the following regarding [REDACTED] for the Student:

"[REDACTED], as implemented by the classroom teacher."

42. The Complainant alleged: "[N]obody really explained what the purpose of the [REDACTED] is. So I have no idea what classes he is to use that in."

43. When interviewed, Staff indicated that a [REDACTED] was always available for and provided to the Student, but that the Student rarely used it. The [REDACTED] consultant reported that the Student had not used the [REDACTED] during the 2017-18 school year. The [REDACTED] consultant also reported that the Student stated he did not need [REDACTED].

Markers

44. The Student's March 2017 IEP and November 2017 IEP included the following substantially similar language regarding using [REDACTED] markers on the classroom Smartboard and white board: "[REDACTED]

[REDACTED]."

45. Teacher reports varied regarding the use of [REDACTED] markers. One teacher stated she did not use them at the beginning of the year, but then removed all markers except for [REDACTED] when she realized it was an accommodation. Another teacher said he used either [REDACTED]. And then a third said she used them generally for the Student.

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP pursuant to 34 C.F.R. §§ 300.17 and 300.101.

2. Minnesota Statutes § 125A.091, subd. 28, provide:

District liability. A district is not liable for harmless technical violations of federal or state laws rules, or regulations governing special education if the school district can demonstrate that the violations did not harm a student's educational progress or the parent's right to notice, participation, or due process. This subdivision is applicable to due process hearings and special education complaints filed with the department.

3. Minnesota Rule 3525.2810 subp.1(A)(9) provides in relevant part:

"Individualized education program" or "IEP" means a written statement for each pupil that is developed, reviewed, and revised in a meeting in accordance with this part and that includes:

...

(9) a statement of how the pupil's progress toward the annual goals described in subitem (2) will be measured, how the pupil's parents will be regularly informed by such means as periodic report cards, at least as often as parents are informed of their nondisabled student's progress, of the pupil's progress toward the annual goals described in subitem (2), and the extent to which that progress is sufficient to enable the pupil to achieve the goals by the end of the year.

4. The District acknowledged that it did not provide a copy of the Student's IHP to all Staff that work with the Student in accordance with the Student's IEP at the beginning of the 2017-18 school year, in violation of 34 C.F.R. § 300.17.
5. The IEP team has since met to review and revise the Student's March 2017 IEP, resulting in the relevant health information summary sheet, which has been disseminated to Staff per the Student's November 2017 IEP.
6. The record supports a conclusion that, so far during the 2017-18 school year, the District reported progress in accordance with the March and November 2017 IEPs. Because a year has not yet passed, the District has additional progress reports that will be completed before the November 2018 annual IEP team meeting.
7. The record supports a conclusion that the PE teacher monitors the Student [REDACTED] and allows for and builds in breaks throughout class, in accordance with the March 2017 and November 2017 IEPs, and 34 C.F.R. § 300.17.

8. The record, including the District's response and interviews with Staff, support a conclusion that the District substantially provided the supplementary aids and services required by the Student's IEP, consistent with 34 C.F.R. § 300.17. The failure to consistently provide the breakdown of material in every class, [REDACTED], the [REDACTED] markers, and seat the Student at the front of the classroom did not amount to a material failure to implement the Student's March 2017 and November 2017 IEPs. The Student's progress toward IEP goals and objectives and individual growth support a conclusion that any failure to consistently provide these supplementary aids and services was a harmless technical violation and did not impact the Student's educational progress or the Complainant's right to notice, participation, or due process.

Decision

The District violated 34 C.F.R. § 300.17, when it failed to provide a copy of the Student's IHP to all Staff that work with the Student in accordance with the Student's IEP at the beginning of the 2017-18 school year.

Corrective Action

By May 31, 2018, the District will contact [REDACTED], MDE's corrective action specialist, to develop a training plan based on the needs of the District. Specifically, the District will discuss with MDE holding the MDE training entitled "Special Education for General Education Teachers," for Staff within the District and assist the District in ensuring IEP services are provided in conformity with the Student's IEP. Any Staff training must be completed by September 1, 2018.

Issue 2

The Complainant alleges the District failed to ensure a substitute provider had access to and provided services in conformity with the Student's IEP [REDACTED].

Findings of Fact

1. The Complainant alleged in her complaint:

[REDACTED], the substitute [teacher] told my son that he had to stay in for recess because he didn't do the math assignment with the rest of the class. He is not working on that same homework in math as he is on a different math level. Therefore, the substitute punished my son for not doing the work that he doesn't even know or hasn't even learned yet, and no idea that he had to go to the resource room.

2. When interviewed, the substitute teacher did not recall keeping anyone in from recess for not completing their work that day. She remembered she was given a list of students who needed to get

caught up on tests, and she took a group of students to another teacher's classroom at recess to work on the tests. She recalled reading a test out loud to one student, who was not the Student in this complaint.

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP pursuant to 34 C.F.R. §§ 300.17 and 300.101.

2. Federal regulations at 34 C.F.R. § 300.323(d) provide:

Accessibility of child's IEP to teachers and others. Each public agency must ensure that—

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

3. The U.S. Department of Education's comments to 34 C.F.R. § 300.323(d), at 71 Fed. Reg. 46681, provide:

Section 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed.

4. The record supports a conclusion that the substitute teacher did not keep the Student in from recess or fail to modify an assignment as required by the Student's IEP, in accordance with 34 C.F.R. § 300.17.

Decision

The District is not in violation.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Marikay Canaga Litzau, J.D.
Director of Compliance and Assistance
Minnesota Department of Education

MCL/kr

c: Daniel Armagost, Special Education Director