

Parent's Position

The parent asserts that the student has not been receiving his special education services from a teacher who has been trained in research-based structured literacy reading instruction, nor has a teacher with such training been supervising the provision of the student's special education services. It is the position of the parent that because the student's special education teacher lacks specific training in the area of dyslexia, she does not understand the student's disability and the impact that disability has on language-based learning and is therefore unable to develop appropriate goals for the student or to implement appropriate, individualized remediation.

The parent further contends that, during the week of November 11, 2019, the Kansas State Board of Education passed new regulations regarding services to students diagnosed with dyslexia that would inform decision-making on this issue.

District's Position

The district contends that neither state statute nor KSDE teacher licensing regulations require that special education staff be specifically trained in a "multisensory approach." The district further asserts that pedagogy, such as multisensory approach, is not a consent item under IDEA.

Applicable Laws and Regulations

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. School districts must take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities (34 C.F.R. 300.156; 34 C.F.R. 300.207).

Federal regulations implementing the Individuals with Disabilities in Education Act (IDEA) at 34 C.F.R. 156(c) require that the state education agency (KSDE) must ensure that "each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school – (i) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher. (ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Holds at least a bachelor's degree."

Kansas statutes, at K.S.A. 72-3404(j), define a "Special Teacher" as a "person, employed by or under contract with a school district or a state institution to provide special education or related services, who is: (1) Qualified to provide special education or related services to exceptional children as determined pursuant to standards established by the state board."

Regarding instructional methodology, the Office of Special Education Programs (OSEP), which is the office within the United States Department of Education that writes and enforces the federal regulations implementing the IDEA has stated that “the courts have indicated they will not substitute a parentally-preferred methodology for sound educational programs developed by school personnel in accordance with the procedural requirements of the IDEA to meet the educational needs of an individual child with a disability.” See *Federal Register*, Vol. 64, p. 12552, March 12, 1999. OSEP repeated this principle when the federal regulations were revised in 2006 after the reauthorization of IDEA, “There is nothing in the Act [IDEA] that requires an IEP to include specific instructional methodologies.” See *Federal Register*, Vol. 71, p. 46665, August 14, 2006.

Further, in Hendrick Hudson Dist. Bd. Of Ed. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 553 IDELR 656 (1982), the Supreme Court held that the primary responsibility for choosing instructional methodology is left with the local school district (also see Johnson by Johnson v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, 316 F. Supp. 2d 960, D. Kan. 2003, 41 IDELR 64 stating that “So long as the court determines that a child’s IEP is reasonably developed to provide the child a FAPE, then the court must leave questions of methodology to the school district.”). The federal Circuit Courts of Appeal have continued to follow this precedence (see M.M. v. School Bd. Of Miami-Dade County, Fla., 45 IDELR 1 (11th Cir. 2006); Cerra v. Pawling Cent. Sch. Dist., 44 IDELR 89 (2d Cir. 2005); Barnett v. Fairfax County Sch. Bd., 17 IDELR 350 (4th Cir. 1991); Tucker v. Calloway County Bd. Of Educ., 27 IDELR 599 (6th Cir. 1998); Lachman v. Illinois State Bd. Of Educ., 441 IDELR 156 (7th Cir. 1988)). Regarding the selection of staff, see Slama by Slama v. Independent Sch. Dist. No. 258, 259 F. Supp. 2d 880, D. Minn. 2003, 39 IDELR 3 holding that “school districts have the sole discretion to assign staff” and “[a]lthough the Supreme Court [in Rowley] has recognized the importance of parental consultation, and participation in the IEP decision-making process, nothing in the Court’s opinions suggest that parents usurp the District’s role in selecting its staff to carry out IEP’s provisions.” Also, see OSEP Letter to Hall, 21 IDELR 58, 1994, stating “While Part B [of the IDEA] does mandate the required components to be included in each child’s IEP to ensure that the child’s identified educational needs can be addressed, Part B does not expressly mandate that the particular teacher, materials to be used, or instructional methods be included in a student’s IEP.”

~~* On November 12, 2019, the Kansas State Board of Education approved the recommendations of the Dyslexia Committee for pre-service teacher programs, professional learning, screening and evaluation, and evidence-based reading practices and adopted a definition of dyslexia developed by the International Dyslexia Association (IDA). The KSDE Dyslexia Committee was established for the purpose of evaluating recommendations of the Legislative Task Force on Dyslexia which was created in 2018.~~

~~No new regulations – special education or otherwise – were passed by the State Board in November 2019 with regard to dyslexia. The approved recommendations mentioned above involve a number of actions that will take place based on established timelines beginning in July of 2020 with implementation into 2024. These approved recommendations and timelines are in~~

the November 2019 Board Materials, pages 51 through 58, posted at <https://www.ksde.org/Board/Kansas-State-Board-of-Education/Agendas-Meeting-Dates-and-Minutes/2019-Meeting-Materials-Minutes>.

Investigative Findings

- * This investigation has determined that the teacher assigned by the district to provide the services specified in the student's IEP meets state and district requirements with regard to licensure, certification, preparation and training. The teacher holds current certification in the area of Adaptive Special Education for preschool through grade 12.

Summary and Conclusions

This investigation has determined that the teacher assigned by the district to provide the services specified in the student's IEP meets state and district requirements with regard to licensure, certification, preparation and training.

- * Special education statutes and regulations do not grant parents the right as a part of the IEP process to dictate either the personnel designated to deliver services to a student or the methodology or materials that will be used in the instruction of the student.

Under these circumstances, a violation of special education statutes and regulations is not substantiated on this issue.

Corrective Action

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

Right to Appeal

Either party may appeal the findings 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, Kansas 66612-1212. That notice of appeal must be delivered to Special Education and Title Services, designee of the State Commissioner of Education, 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), which is included below.


Diana Durkin, Complaint Investigator