KANSAS STATE DEPARTMENT OF EDUCATION

RESULTS OF ADMINISTRATIVE REVIEWe
REQUESTED ON JUNE 9, 2016e

DATE OF WRITTEN RESULTS: AUGUST 16, 2016[1]

This is a review pursuant to K.A.R. 91-42-5 of an April 6, 2016, incident involving a student and a paraprofessional at J(...), located in USDe(...), (...). More specifically, this is a review of (...) 's management of theincident. As part of the review, the student's father and sister were interviewed in person andprovided the hearing officer with documents and videos to review. District personnel were interviewed by telephone. Counsel for the school district met with the hearing officer and provided access to relevant documents, including the police report, and video of the incident.

Having had an opportunity to review this matter fully, the hearing officer finds and concludes ase follows:

Findings of Fact

1. (...) is a 17-year-old[2] student who attends (...), a school he has attendede since November 2014. He has only ever been a (...) student. He is a special educationestudent with an Individualized Education Program (IEP). (...)'s medical diagnosis results in symptoms including intellectual disability, poor coordination, medical conditions, as well as speech and language difficulties. However, school records note (...) is "empathetic and sympathetic to others. .e. He is respectful and polite to adult and students on most occasions. . .. [He] is also very considerate and kind to others and will often lend help or aid to his peers and/ore teachers . . . [he] is also very social and . . . makes friends easily."

2. During the 2014/2015 school year, (...)and paraprofessional (...) experienced conflict. The district and (...) family agreed (...) and (...) were not to be alone together. This informationewas not included in (...) IEP and itis unclear how it was communicated to district personnel.

[1] By agreement of the parties and with approval of the Commissioner of Education, an extension was granted for the completion of this administrative review.
[2] (...) was 16 years old at the time of the incident.

3. On the morning of April 6, 2016, (...) and (...) were involved in the incident subject to this review. More specifically, there was an incident over personal property that led (...) to place (...) in a headlock. Complaining of pain, (...) was eventually treated at Children's Mercy Hospital for a muscle strain.

4. No one from the district notified (...)'s family the day of the incident. However, Wednesdays are an early release day for the school and(...)reported the incident to his sister, (...)[3], upon arriving home. She sent a text to (...), (...)'s teacher, at approximately 12:20 p.m. that day and a dialogue began. (...), Assistant Principal and Life Skills Coordinator, also stated he tried to call (...) that same day. However, the school did not have a working number for (...) on file (though Mr. (...) had her cell number).

5. It is worth noting that prior to the family's formal complaint, Mr.(...) completed a building-level investigation. He reviewed the video as soon as he learned of the incident (noon, April 6, 2016), interviewed (...), interviewed (...), and spoke with witnesses.

6. Mr. (...)obtained (...)'s number from Mr. (...), and contacted her on April 7, 2016. There was a meeting that same day.

7. Also on April 7, 2016, Mr. (...)e-mailed (...), a district-level special education employee, wherein he noted "physical restraint" was used in this incident. However, at no time was formal documentation provided to the student's family noting that an emergency safety intervention was used, the date and time of the intervention, the type of intervention, the length of time of the intervention was used, and the school personnel who participated or supervised the intervention.

[3] (...)acts as (...)'s parent. The district treats her as (...)'s parent. The district also communicates with (...)'s father.

8. On April 8, 2016, (...) requested a more thorough investigation, including a police report. (...), school principal, e-mailed(...) to inform her campus police[4] were investigating. He provided (...) with the contact information for the investigating officer.

9. On April 19, 2016, unhappy with the investigation thus far, (...) e-mailed a complaint to (...), Board Secretary; (...), Clerk to the (...) Board of Education; and (...) Superintendent. No one responded to this complaint. The district denies it received the e-mail and is investigating why all three individuals failed to receive it.

10. On May 24, 2016, having received no response from the district, (...) filed a second complaint with Ms. (...), Ms. (...), and Dr. (...).

11. On May 25, 2016, (...) resent her previous complaint and added new grievances regarding the investigative process. She sent the e-mail on May 25, 2016, and copied Dr. (...) Director of Special Education, and (...). (...) received a response from Ms. (...)noting Dr. (...) had been assigned to investigate (...)'s complaint. Dr. (...) did speak with (...) on the 25th, though whether that occurred prior to her assignment is unclear. (...) notes she spoke to someone on June 1st, she believes it may also have been Dr. (...).

12. In addition to speaking with (...), Dr. (...)'s investigation included speaking with Ms. (...)and reviewing documents she provided. Dr. (...) did not interview anyone else and she did not review the video of the incident. A more thorough human resources investigation was also completed.

13. On June 9, 2016, (...)filed a request for administrative review with the Kansas State Department of Education, which was forwarded to the clerk of the local board. Her request was timely filed within 60 days of her having filed her initial formal complaint—the district did not render a final decision. Her main complaint was that (...) was placed in a "choke hold" and the

[4] One of the family's complaints is that they believe campus police cannot objectively investigate incidents involving district staff because they are also district staff. That determination is beyond the scope of this review.

school did not notify her immediately. After interviewing (...) and her father, additional complaints include:t

a.t The district's lack of transparency;t
b.t Their belief that district employees (campus police) cannot impartially investigate district employees;t
c.t Their belief that campus police failed to make a police report;t
d.t Their belief that the district should have contacted the Kansas Department fort Children and Families (DCF);t
e.t The district's failure to respond to (...)'s first formal complaint;t
f.t The district's refusal to permit the family to view the video of the incident; andt
g.t (...)'s continued employment with the district.

14. In a June 14, 2016, letter to (...), Dr. (...), Chief Operating Officer, stated:t

> "Your complaint regarding a paraprofessional['s] actions at (...) was received and filed on May 25, 2016. Based on Board of Education policy, the district has a total of thirty (30) days in which to fully investigate and respond in writing. These standardsthave all been met and this is [sic] letter represents official notification of the conclusion of the investigation.
>
> "The complaint has been fully investigated. Upon closure of this investigation I am unable to share with you the specific outcome of this investigation as it may involve a personnel matter. Please know that all concerns that you have reported to the district are taken seriously and are addressed accordingly."

15. During her interview, Dr. (...)said the June 14th letter was the culmination of her ownt investigation into the matter and the human resources investigation. The letter was intended by her as the "final decision" in this matter. There was no indication to (...)'s family that any other investigatory results would be forthcoming.

16. Regarding the personnel matter referenced in Dr. (...)'s June 14th letter, (...) is no longert employed by the district.t

Conclusions of Law

1. An emergency safety intervention is the use of any seclusion or physical restraint. K.A.R. 91-42-1. No one disputes (...) used a physical restraint and, therefore, an emergency safety intervention when restraining (...) on the morning of April 6, 2016.

2. (...)'s use of an emergency safety intervention triggered the requirements found in K.A.R. 91-42-4. More specifically, the district was obliged to notify the parent, in this case, (...)., the same day the intervention occurred, to provide documentation to (...) no later than the following school day, and to provide (...) with additional documentation, the nature of which depended upon whether emergency safety interventions had been used on the student previously that school year. The district policy is consistent with K.A.R. 91-42-4. It provides in relevant part:

> "The principal or designee shall notify the parent, or if a parent cannot be notified then shall notify an emergency contact person for such student, the same day the [Emergency Safety Intervention] ESI was used. Documentation of the ESI used shall be completed and provided to the student's parents no later than the school day following the day on which the ESI was used. The parent shall be provided the following information after the first and each subsequent incident in which an ESI is used during each school year: (1) a copy of this policy which indicates when ESI can be used; (2) a flyer on the parent's rights; (3) information on the parent's right to file a complaint through the local dispute resolution process (which is set forth in this policy) and, once it has been developed, the complaint process of the state board of education; and (4) information that will assist the parent in navigating the complaint process, including contact information for Families Together and the Disability Rights Center of Kansas."

Though the district policy meets the obligations set forth in regulation, in this instance the district failed to follow its policy or the K.A.R. 91-42-4 requirements. The district and (...)did communicate regarding this matter, but it was at (...)'s prompting. (...) did not receive written documentation of the emergency safety intervention used. She was not provided with the relevant policy, the parental rights flyer, notification of her right to file a complaint, or contact information for Families Together and the Disability Rights Center of Kansas.

3. Additionally, districts are required to provide a local dispute resolution process regarding the use of emergency safety interventions. K.A.R. 91-42-3. At a minimum, the local dispute

resolution must provide a procedure by which a parent can file a complaint, provide a complaint investigation procedure, require the issuance of a final decision, and provide for parental notification of the right to request an administrative review. Here, the district has a local dispute resolution process in place that meets these minimum standards. The district policy provides in relevant part:

> "If the issues are not resolved informally with the building principal and/or superintendent, the parents may submit a formal written complaint to the board of education by providing a copy of the complaint with the clerk of the board and the superintendent within thirty (30) days after the parent is informed of the ESI.
>
> "Upon receipt of a formal written complaint, the board president shall assign an investigator to review the complaint and report findings to the board as a whole. Such investigator may be a board member, a school administrator Selected by the board, or a board attorney. Such investigator shall be informed of the obligation to maintain confidentiality of student records and shall report the findings and recommended action to the board in executive session.
>
> "Any such investigation must be completed within thirty (30) days of receipt of the formal written complaint by the board clerk and superintendent. On or before the 30th day after receipt of the written complaint, the board shall adopt written findings of fact and, if necessary, appropriate corrective action. A copy of the written findings of fact and any corrective action adopted by the board shall only be provided to the parents, the school and the state department of education. A parent may file a complaint under the state board of education administrative review process within thirty (30) days from the date a final decision is issued pursuant to the local dispute resolution process or, if a final decision was not issued, within 60 days from the date the written complaint was filed with the board of education."

However, the district, again, failed to follow its own policy and failed to meet its obligations under K.A.R. 91-42-3. (...) first filed a formal complaint in April and no one from the district acknowledges receipt. However, district personnel appear to have received all other e-mails from (...) related to this matter. Upon receipt of her second and third complaints in late May, the district finally responded to (...), but the district's investigation after receiving (...)'s formal complaints was inadequate and its June 14, 2016, letter failed to comply with district policy.

Suggested Corrective Action

The district violated the emergency safety intervention regulations. As a result, the corrective actions listed below are suggested and some of the family's other concerns are also briefly addressed.

First, upon receipt of this report, the district should reopen this matter. The district should follow the district policy in place at the time of the incident. That is, the district should provide the family with documentation of the intervention used, a copy of the policy which indicates when emergency safety intervention can be used, a parental rights flyer, information on the right to file a complaint through the local dispute resolution process, and information that will assist the parent in navigating the complaint process, including contact information for Families Together and the Disability Rights Center of Kansas.

Furthermore, upon receipt of this report, the district should complete a full investigation of the complaint and adopt written findings of fact, and, if necessary, appropriate corrective action—Mr. Fernandez's investigation may be helpful as he contemporaneously interviewed the important witnesses. This should be completed within 30 days of receipt of this report. A copy of the written findings of fact and any suggested corrective action should also be provided to J.H.'s family within 30 days of the district's receipt of this report.

If, upon receipt of the district's final decision the family desires further administrative review, the process will start anew.

Additionally, the district has indicated it plans to provide remedial emergency safety intervention training to district staff. It is suggested that this occur immediately and that it include a full review of legal obligations and district policies. And, perhaps more importantly, the training should include identifying when an emergency safety intervention has occurred and the responsibilities that triggers.

The family also requested a police report be made and DCF be notified. Officer Gary Washington made a report dated April 8, 2016, and DCF is investigating the incident.

Determination

It is therefore concluded that this matter is remanded back to the local board for further consideration. The local board should follow its dispute process and issue a final decision after investigating the matter further. It should also consider how to best implement the suggested corrective action to ensure its policies, and, therefore, the emergency safety intervention regulations, are followed.

Kelli M. Broers

Kelli M. Broers, Attorney
Hearing Officer
Office of General Counsel
Kansas State Department of Education
900 SW Jackson St., Suite 102
Topeka, Kansas 66612
(785) 296-3204

CERTIFICATE OF MAILING

I hereby certify that on this 16th day of August, 2016, a true and correct copy of the above and foregoing was mailed by certified mail, return receipt requested, to:

And

Kelli M. Broers
Kelli Broers