Special Education Formal Complaint Decisions 2017-18

Each decision has been redacted to remove the identification of the school district and any personally identifiable information of the student or the student's parents. The initial file number represents the fiscal year in which the case was filed and the letters immediately following the initial file number represent the kind of hearing held. Accordingly 18FC01 signifies a Formal Complaint filed in the 2018 fiscal year (July 1, 2017 to June 30, 2018). The case citation of 18FC02 Appeal Review signifies the decision of the state appeal committee for case number 18FC02. All files are PDF.

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KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON AUGUST 11, 2017

DATE OF REPORT: SEPTEMBER 11, 2017

This report is in response to a complaint filed with our office by ____ and ____ _____ on behalf of their son, ____. In the remainder of this report, _____ will be referred to as “the student” while _____ and _____ _____ will be referred to as “the mother” or the “father” respectively, or "the parents."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ by telephone on September 1, September 6, September 7, and September 11, 2017. USD #___ made the following staff person available to be interviewed:

- _____, Mediation and Due Process Supervisor

The Complaint Investigator spoke to the complainant by telephone on August 21, August 22, August 28, August 29, August 31, September 6, and September 7, 2017. The following person was interviewed:

- Mother

In completing this investigation, the complaint investigator reviewed the following material:

- Notice of Meeting (NOM) dated November 30, 2016 for eligibility determination and IEP team meeting on December 12, 2016
- Individualized Education Program (IEP) for the student dated December 14, 2015
- IEP for the student dated December 13, 2016
- Multidisciplinary Team Report (MTR) dated December 12, 2016
- Functional Behavioral Assessment (FBA) dated December 12, 2016
- Prior Written Notice (PWN) for Change in Services dated December 12, 2016 adding additional special education instruction in the special education setting.
- PWN for Change in Services dated December 12, 2016 refusing to add assistive technology and a behavior intervention plan (BIP) to the student’s IEP

- Handwritten notes provided by the parent from the December 7, 2016 meeting between the parents, MK, Dr. JE, and KB
- Email correspondence between _____, Dr. JE, and JH dated September 6, September 7, October 26, November 9, November 10, November 14, 2016 regarding the corrective action required by the September 2, 2016 child complaint investigation
- Email correspondence between _____ and Mark Ward dated October 26, November 7, November 10, 2016 regarding the completion of corrective action required by the September 2, 2016 child complaint investigation
- Letter to USD #___ and the parents from the Kansas Department of Education granting an extension to complete the corrective action required by the September 2, 2016 child complaint investigation
- 9th Grade Child Study Team Notes for the student August 31, 2016 through April 5, 2017
- Psychological Evaluation Report written by Dr. SE, Psychologist at The Therapy Center dated July 29, 2015
- Timeline of Events during the 2016-17 school year created by USD #___
- IEP Goal Progress Reports for the student dated May 11, 2017
- Student Schedule for the 2017-18 school year

Background Information

This investigation involves a fifteen year-old student who was enrolled in the ninth grade at USD #___ during the 2016-17 school year.

Records indicate the student was retained in kindergarten and attended three different elementary schools for grade kindergarten through fifth grade. A 504 plan was initiated during the student's fifth grade year due to concerns with social issues and lack of organization. The student began sixth grade at _____ Middle School and his parents report that due to bullying, the student was then enrolled in the _____ School where he finished sixth grade and reportedly did "great" and was socially interacting with all age levels. The student attended seventh grade at the _____ School and was placed in the "PACE" program to assist the student to catch up with the grade level curriculum. The student attended ____ Center for STEM and the ____ Magnet Middle School for eighth grade. The student was enrolled in USD #___ during the 2016-17 school year and attended ____ High School for ninth grade.

Documentation shows the student received medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and autism in July 2015 from Dr. SE, PhD., psychologist at The Therapy Center. Records indicate the student continued to have a 504 plan and

a Section 504 Behavior Intervention Plan during the first semester of the 2015-16 school year. On December 7, 2015, the student was initially found eligible for special education in the exceptionality category of Other Health Impaired (OHI) and Autism and that the student was in need of special education services. An initial IEP team meeting was held on December 14, 2015 and an IEP developed that would provide special education instruction and counseling as a related service to the student. The parent provided consent for initial services on February 12, 2016.

Issues

The complainant raised three issues which were investigated.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly conduct the functional behavioral assessment and the assistive technology assessment of the student during the 2016-17 school year as required by the child complaint decision dated September 2, 2016.

Findings:

A child complaint investigation was conducted in August 2016 and found the parents had provided consent to conduct a functional behavioral assessment (FBA) and assistive technology assessment (ATA) on December 14, 2016. However, this evaluation was not completed within the 60 day timeline due to the parent only making the student available on 33 days following the provision of written consent for the reevaluation. The child complaint investigation report dated September 2, 2016, noted that the student was currently enrolled in the ninth grade at USD #___ and ordered USD #___ to complete the FBA and ATA for the student within 60 school days of the first day of the 2016-17 school year, unless there was an exception to the 60 school day timeline specified in 34 C.F.R. 300.301(d)) and K.A.R. 91-40-8(f) or (g).

Federal regulations, at 34 C.F.R. 300.301(d)), and state regulations, at K.A.R. 91-40-8(f) and (g), allow for only three specific instances when an extension of the 60 school-day evaluation timeline may be justified:

a. The parent of the child repeatedly fails or refuses to produce the child for the evaluation; or,

b. If a child enrolls in a new district after the evaluation has begun and

before the determination of eligibility, however, the new district is required to make sufficient progress to ensure a prompt completion of the evaluation, and the parent and the school district must agree to a specific timeline for completion; or,

c. If the parent and the school agree in writing to extend the timeline.

Federal regulations, at 34 C.F.R. 300.306, require that upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability and the educational needs of the child. Parents are to be provided an opportunity to participate in the eligibility meeting, which can be conducted at the same time as the IEP team meeting. K.A.R. 91-40-17(b)(1) requires the school district to provide a notice of the meeting at least 10 calendar days prior to the meeting date. The parents and qualified professionals must review the results of the evaluation to determine: (1) whether the child is a child with an exceptionality as defined in Federal and State laws and regulations and (2) the educational needs of the child as required by 34 C.F.R. 300.306(a)), K.A.R. 91-40-10(a)(1), and K.A.R. 91-40-1(k)(w).

Federal regulations, at 34 C.F.R. 300.503 requires school districts to provide parents with prior written notice of any decision to change or refuse to change the provision of a free appropriate public education (FAPE) to a student.

Documentation found USD #___ had until November 30, 2016 to complete the FBA and ATA in order to comply with the 60 day evaluation timeline.

USD #___ requested an extension to that timeline from the Kansas Department of Education on November 7, 2016 stating the student had only attended school for three days during the past three week period because of excused absences due to illness. Ms. _____ noted in her email that "*Due to the extensive absences, the team has requested the November 30, 2016 date be extended. I am not sure if an extension will change anything, but put the request forward on the team's behalf. Ultimately, the team may have to complete the FBA and AT evaluations as best they can with the data available."*

On November 10, 2016, the Kansas Department of Education granted an extension until December 15, 2016 for completing the corrective action required by the child complaint.

A Notice of Meeting dated November 30, 2016 was provided to the parents scheduling a meeting for December 12, 2016 at 2:00 p.m. to review the evaluation results and

determine eligibility as well as review or revise the individualized education program (IEP).

The parent's provided handwritten notes from a meeting held on December 7, 2016 between the parents and school staff including MK, IEP case manager, Dr. JE, school social worker, and KB, school psychologist. The parents report this meeting was to discuss the FBA and ATA while Child Study Team Notes from 2016-17 indicate the meeting was to discuss the parent's concern about having the student in the in-school suspension room (ISSR.) The handwritten meeting notes from the parent describe school staff indicating that a behavior intervention plan (BIP) would not be written because the school staff has not "figured out what will work" and that an additional nine weeks was needed in order to complete an accurate FBA. The handwritten notes indicate school staff suggested that the parents could either request an extension to complete the current FBA or request another FBA at a later date in order to collect more accurate data for the additional nine weeks.

Documentation shows the Multidisciplinary Evaluation Team met on December 12, 2016 with the following persons present: parents; LW, School Administrator; TK, General Education Teacher; MK, IEP Case Manager; KW, School Nurse; KB, School Psychologist; Dr. E; and JH, Assistive Technology Specialist.

The Multidisciplinary Team Report (MTR) documents the ATA was conducted between September 9 and December 9, 2016 using the following assistive technology: keyboarding device and two different amplification devices. The analysis of the data from the trials of these devices did not document any educational benefit to the student. Concerns were noted for absences from school and being absent from class during extended bathroom breaks.

The FBA identified work avoidance as the targeted behavior. This behavior was described as "*any behavior that involves not completing classwork, not staying in class, not participating in class. Examples include sleeping in class, long breaks, listening to music during lectures, requests to leave class to see other staff, attempts to engage staff in discussions, talking to peers, wandering with the class.*" Data for on task behavior was collected on seven school days between October 13 and November 28, 2016. The data reflects the student was on task an average of less than 50% of the time in class. Interventions attempted during ninth grade included working one on one with the student; regular counseling with him from his teachers; sending an email and homework home electronically; providing a separate environment for completing assignments; and allowing the student 10 minutes to play on his phone after 25 minutes of work. Interventions attempted during eighth grade included shortened assignments;

teachers completing a Home Communication sheet daily; teachers providing a task sheet during each class period; and allowing two breaks per class period (one bathroom and one other). Based on the data, it was recommended that a behavior goal be added to the IEP for the student to independently complete and turn in assigned work 70% of the time. The current completion rate is 47% in biology; 21% in Algebra; 66% in English; and 32% in History.

The MTR concluded the student continues to have an exceptionality in the area of Other Health Impairment (OHI) and Autism. The MTR also includes the recommendation that the student does not qualify for assistive technology or a behavior plan at this time.

Documentation found the parents were provided with prior written notice on December 12, 2016 stating "*The Functional Behavioral Assessment determined what the function of the student's behavior is, but did not result in a plan that was supported by the data collection to date. Data will continue to be collected as part of goal measurement while interventions are on-going. The Assistive Technology evaluation did not produce data showing that a specific assistive devise improved outcomes for the student."*

Documentation and interview found the FBA and ATA were completed following the appropriate procedures and within the timeline due to an acceptable extension. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

> **ISSUE TWO:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to incorporate specialized instruction and classroom accommodations into the IEP to address the student's behavior resulting from a diagnosis of high functioning autism, specifically "black and white" thinking, during the past 12 months.

Findings:

Federal regulations, at 34 C.F.R. 300.320, require the individual education program (IEP) to include a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child, and a statement of the program modifications that will be provided to enable the child to:

1) advance appropriately toward attaining the annual goals;
2) be involved in and make progress in the general education curriculum;
3) participate in extracurricular and other nonacademic activities; and,
4) be educated and participate with other children with disabilities and nondisabled children.

The mother reported concerns that the IEPs developed for the student during the past 12 months do not reflect the recommendations from the Psychological Evaluation Report dated July 29, 2015 by SE, Ph.D., BCBA-D. The mother reports the student exhibits “black and white” thinking which causes difficulty with communication between the student and his teachers and peers. Documentation found that report recommended the student receive services to help address his symptoms of autism including difficulties with social communication, problems identifying and discussing emotions in himself and others, and difficulties in relationships with teachers and peers. The report also indicated the student would benefit from social skills groups that promote social thinking and social judgement.

Ms. _____ acknowledged this Psychological Evaluation Report was received and reviewed by school district staff during the initial evaluation of the student in December 2015.

Documentation found two IEPs in effect between August 11, 2016 and August 11, 2017. Parents participated in the development of both of these IEPs.

The first IEP was dated December 14, 2015 and documented the student was eligible for special education due to an exceptionality in the areas of Other Health Impaired (OHI) and Autism. This IEP included a goal to demonstrate problem solving skills by identifying the problem and generating two solutions appropriate to the situation. The IEP also included an accommodation to allow the student to go to a preferred staff member who is available which may include taking a brief break when he becomes frustrated during class. This IEP required 15 minutes per week of counseling provided by the school psychologist and 80 minutes per week of specialized instruction in the regular education setting for math, English language arts, science, and social studies.

The second IEP was developed on December 13, 2016 and also documented the student’s need for special education services due to the exceptionality of OHI and Autism. This IEP includes a goal to participate in activities and discussions to address the social and coping skills needed to help make positive choices in the classroom. This IEP continued to include an accommodation to allow the student to go to a preferred staff member which may include taking a brief break when he becomes frustrated during class. This IEP requires 15 minutes per week of counseling provided by the school psychologist and 150 minutes per week of specialized instruction for math and English language arts in the special education setting.

Documentation shows both IEPs reflect the student’s exceptionality of autism and include goals, services, and accommodation that are consistent with the

recommendations in the Psychological Evaluation Report obtained by parents and shared with the school district in 2015. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

ISSUE THREE: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the 2017-18 school year, specifically by developing a student schedule that does not reflect the specialized instruction and placement required by the most current IEP.

Findings:

Federal regulations, at 34 C.F.R. 300.323, require each school district to have an IEP in effect for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part B at the beginning of the school year.

The mother shared concerns that the schedule developed for the student for the tenth grade during the 2017-18 school year is not appropriate because the student could not have passed his ninth grade classes due to not attending school from February 9, 2017 through the end of the school year. The mother also indicated the school staff recommended the student have all core classes in the special education setting due to failing grades in response to the parent's request to hold an IEP meeting, develop a behavior intervention plan (BIP), and conduct additional academic testing at the beginning of February 2017.

The findings of Issue Two are incorporated herein by reference.

The Transition Plan included in the IEP dated December 13, 2016 noted the student would be enrolled in the following core academic classes during the 2016-17 school year: Algebra 1, Biology, English 1, and World history. During the 2017-18 school year, the following core classes were anticipated: Earth/Space Science, English 2, Geometry, and US History I.

The IEP Progress Report dated May 11, 2017 documents the student missed all or part of 36 days during third quarter and the entire fourth quarter and no IEP goal progress was available to be reported.

A copy of the tenth grade schedule for the student reflects USD #___ assigned the student to Biology I, World History, Earth/Space Science, US History I, and

Ceramics/Pottery I in the general education setting with adapted Geometry and adapted English 2 in the special education setting.

Ms. _____ reported the student is not currently enrolled in USD #___ for the 2017-18 school year as the parents have not completed the enrollment process.

Documentation found the student's proposed schedule for the 2017-18 school year did reflect the special education services for math and English language arts classes in the special education setting as required by the most current IEP developed on December 13, 2016. In addition, the schedule reflects the student re-taking core classes to earn the required credits to graduate from high school. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
_____PUBLIC SCHOOLS, USD #___
ON AUGUST 18, 2017

DATE OF REPORT: SEPTEMBER 11, 2017

This report is in response to a complaint filed with our office on behalf of ____ by his father, _____. ____ will be referred to as "the student" in the remainder of this report. Mr. _____ will be referred to as "the parent."

Investigation of Complaint

On August 29 and September 11, 2017, Diana Durkin, Complaint Investigator, spoke by telephone with the student's parents. On September 1 and 8, 2017, the investigator spoke via conference call with _____, Executive Director/Director of Special Education for _____ and _____, Assistant Director. The investigator also spoke by telephone with the Assistant Director on September 7, 2017.

In completing this investigation, the complaint investigator reviewed the following material:

- IEP for this student dated November 19, 2015
- Staffing Notes dated November 10, 2016
- Request for Special Education Due Process Hearing dated November 17, 2016
- Mediation Agreement dated December 19, 2016
- Staffing Notes dated January 17, 2017
- Screen shot of text messages between the student's mother and classroom teacher dated August 1, 2017
- Notice of Meeting dated August 1, 2017
- List of LPNs assigned to the student since 2006 provided by the district
- Staffing Notes dated August 16, 2017

Background Information

This investigation involves an 18-year old boy who has been diagnosed with MPS IIA (Hunter's Syndrome), a very rare genetic disorder caused by a missing or malfunctioning enzyme. He has a high aspiration risk when eating due to an oral-pharyngeal dysmotility. He has been diagnosed with Hypercalciuria (elevated calcium in the urine), which impacts his diet. His respiratory system is

compromised resulting in a “reactive airway disorder” which may result in oxygen deprivation during a respiratory episode. The student’s motor skills have been compromised due to his underlying conditions. He has a restricted range of motion in his upper and lower extremities and a loss of muscle tone as well as clubbing of his hands and painful joints. He is ambulatory but does use a wheelchair at times. The student currently has a shunt (a Lumbo-Gallbladder shunt placed in June of 2014). The student has a fluctuating hearing loss ranging from the moderate to moderately severe to profound levels.

According to school records, many health issues could arise for the student during any given school day. Beginning in 2006, medically trained staff (with minimum LPN certification) have been assigned to support the student throughout his school days. These individuals have also provided educational support to the student, assisting with class work as needed.

On August 15, 2017, two days before the start of the 2017-18 school year on August 17th, the LPN who had been hired to provide support for the student notified the district that due to her need to care for her terminally ill mother she was resigning from her position with the district. By report of the Executive Director, the district took numerous steps to fill the vacated position before the start of the school year. Those efforts included contacting more than a half dozen nursing agencies, advertising in 3 newspapers, posting a listing on-line and on the _____ bulletin board and website, communicating the vacancy via email to all staff, and posting the vacancy with the county health department. Despite these efforts the LPN position had not been filled by the time of an IEP Team meeting wherein the parents were notified of the situation on August 16, 2017.

In a telephone conversation with the investigator on September 8, 2017, the Executive Director reported that two candidates for the position had been interviewed and an offer of employment had been extended to one of those candidates.

Issue

The parent asserts that the student has been denied rights associated with a Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) because the district representative refused to consider any option for the provision of services to the student other than homebound instruction when the LPN assigned to support the student unexpectedly resigned.

Relevant Facts

According to the parents, the last "agreed upon" IEP for the student was developed on November 17, 2015. While IEP Team meetings have been convened since that date (the most recent prior to this school year having been held on January 17, 2017), special education services for the student have been provided as outlined in the student's November 2015 IEP. Staffing Notes from an Annual IEP Team meeting on November 19, 2016 reflect that, "Parents state the IEP is a good IEP that is currently in place and it is functioning. Team will continue to follow current (November 17, 2015) IEP."

According to the November 2015 IEP, the student is to be provided with "direct nursing services in all settings of school attendance." The "Health" portion of the "Present Levels of Academic and Functional Performance" section of the November 2015 IEP states that "a medically trained person (with a minimum of LPN certification) will be with (the student) at all times that (the student) is in attendance…"

The parents filed a request for a Special Education Due Process Hearing on November 18, 2016. The district and the parents voluntarily entered into mediation regarding the issues outlined in the Due Process Hearing request. On December 19, 2016, a Mediation Agreement was developed. The mediation agreement was signed by both parents and by the Executive Director/Director of Special Education and the Superintendent of Schools for USD #___.

The agreement includes – among other statements – the following:

- "We understand that this agreement is legally binding."
- "We understand that this agreement may be enforced in a state or federal court."
- "District & Coop…represented by (the Executive Director/Director of Special Education and the Superintendent of Schools for the district) agree to replace the 1:1 nurse…"
- "District and Coop…agree that, in the event the 1:1 nurse is absent, the Coop will use its best efforts to find either a teacher or a para to provide 1 hour of homebound instruction on the day of absence. The Coop will look first for an available teacher and then, if no teachers are available, will look for a para. If the Coop is unable to find either a teacher or a para to provide the homebound instruction on the day of the nurse's absence, the Coop agrees to provide the additional hour of instruction at a mutually agreeable time."

An IEP Team Meeting was convened on August 16, 2017. At that meeting, the parents were informed of the unexpected resignation of the LPN who had been assigned to provide nursing services to the student beginning on August 17, 2017.

According to the Staffing Notes from the August 17th meeting and by report of both the parents and the district, the student's mother suggested that the IEP Team amend the IEP to allow the student's special education teacher, the building principal, or a paraeducator to provide the services that would have been delivered by the LPN until a nurse could be employed. The Assistant Director stated that according to the mediation agreement, an LPN (or someone with greater training) must provide the nursing services to the student. Because the Assistant Director had stated that the mediation agreement could not be changed, the parents left the meeting. The remaining IEP Team members subsequently discussed the provision of homebound services to the student pending the hiring of qualified staff to provide nursing services.

Parent's Position

It is the parent's contention that the Assistant Director's refusal to allow the IEP Team to amend the IEP and designate someone other than an LPN to provide nursing services on an interim basis violated the student's rights with regard to FAPE and LRE. The parents assert that the situation for the student has changed since the mediation agreement and the November 2015 IEP were developed. They contend that the student is better able to communicate his medical needs now that he is older. They also note that a school nurse is available in the building that could support non-LPN service providers with regard to the student's needs.

According to the parents, they entered into a mediation agreement they "did not like" in order to "get our son back into school after almost three months of homebound services, knowing that at the next IEP meeting we would be able to again discuss changes to support (the student's) rights to LER (sic)."

District Response

It is the district's position that the district and Cooperative are bound by the provisions of the December 2016 mediation agreement and are obligated to follow the "promises" of that agreement by providing homebound services beginning the first day of school since the previously-contracted LPN is not available.

Mediation Agreements

Federal regulations, at 34 C.F.R. 300.506(b)(7), specify that special education mediation agreements must be written, signed, and enforceable in any state court of competent jurisdiction, or in a district court of the United States. Accordingly, a state complaint investigator does not have jurisdiction to make any judgments regarding whether such an agreement remains in force or is being properly implemented. Any questions regarding such an agreement must be presented to a state or federal district court.

This is the case even when a parent makes a complaint alleging that the agreement is resulting in denial of rights associated with FAPE. In Ballard v. Philadelphia Sch. Dist., 108 LRP 22321, 276 F. App'x 184 (3rd Cir. 2008) where a parent claimed her settlement agreement should be voided because it denied her child a FAPE, the United States Circuit Court of Appeals said: "The fact that Ms. Ballard entered into a settlement agreement which she now contends falls short of providing her daughter with a FAPE, does not inherently violate law or public policy. Parties routinely enter into agreements to resolve litigation. An agreement is not void because a party settled for less than s/he later believes the law provides."

Federal regulations, at 34 C.F.R. 300.537, state that, notwithstanding the regulations which provide for judicial enforcement of written agreements reached as a result of mediation or a due process resolution meeting, there is nothing that prevents a state department of education from using other mechanisms to seek enforcement of such agreements, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

The Kansas State Department of Education has established no other mechanism for enforcement of mediation agreements. Therefore, any disagreement regarding this mediation agreement requires a judicial action.

Conclusions

This complaint involves a mediation agreement signed by the parents and representatives of the Cooperative and school district on December 17, 2016. The student's IEP Team does not have the authority to override the provisions of the December 2016 mediation agreement. Further, the complaint investigator does not have the jurisdiction to investigate the enforcement of such an agreement. Any challenges to, or defense of, this agreement must be made to a state or federal court, not to a complaint investigator.

Therefore, this complaint must be dismissed for a lack of jurisdiction.

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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____
Diana Durkin, Complaint Investigator

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).

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
DODGE CITY UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 28, 2017

DATE OF REPORT: OCTOBER 25, 2017

This report is in response to a complaint filed with our office by ____ and _____ _____ on behalf of their son, _____. _____ will be referred to as "the student" in the remainder of this report. Mr. and Mrs. _____ will be referred to as "the parents."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with J.M., Interim Director of the ___ Kansas Area Cooperative District (_KACD), on October 6 and 9, 2017. On October 9, 2017, the investigator also spoke by telephone with the student's mother. On October 24, 2017, the investigator spoke by telephone with Cheryl Tomson, School Psychologist for the Kansas State School for the Blind (KSSB) and with Robert Taylor of the Outreach Department of KSSB.

In completing this investigation, the complaint investigator reviewed the following material:

Prior Written Notice for Identification, Initial Services, Placement, Change of Services, Change of Placement, and Request for Consent dated March 22, 2017

IEP for this student dated April 28, 2017

Conference Summary and Parent Consent dated April 28, 2017

Email correspondence between the parent and the Director and/or the Interim Director of the ____ Kansas Area Cooperative between June 26 and September 14, 2017 regarding transportation reimbursement

Background Information

This investigation involves a 13-year-old boy who has been diagnosed with a rare genetic disorder – Malignant Infantile Osteoporosis – which causes abnormal hardening of bones which constrict and put pressure on nerve endings resulting in a variety of issues including vision and hearing loss.

According to a report of a vision assessment conducted on September 19, 2016 by St. Jude's Research Hospital, the student's right eye has a retinal chorioretinal scar, and his left eye has a hypopigmented lesion. Both eyes show optic nerve damage. His uncorrected distance vision was reported as 20/400; uncorrected near vision was reported as 20/400 for each eye. Bilateral acuity with correction was reported as 20/200.

A hearing test completed at St. Jude's in 2009 indicated the student has normal hearing in his right ear and a moderate to severe loss in his left ear. The student uses a bilateral FM system and Cros system for his unilateral loss.

The student has a history of eating problems and has been seen for extended inpatient stays at the Kriger Institute in Baltimore, Maryland. According to the student's mother, these eating issues had stabilized for a time but have recently increased. A return to Maryland for assessment is anticipated. It was recently determined that the student is lactose intolerant.

The student first received special education services from the ____ Kansas Area Cooperative at age three while enrolled in a private preschool program.

During his kindergarten year, special education services were delivered "by special arrangement" and the student was home-schooled following in-patient treatment for eating problems.

The student was enrolled in a private school setting at the beginning of his first-grade year but by report of the parent he was "kicked out of" that school in December following a significant incident. After that incident, the student participated in an evaluation at the Kansas State School for the Blind (KSSB). Staff from Project Stay were also brought in to conduct an evaluation of the student. The district subsequently proposed an IEP for services in the public school setting, but the parent declined those services. The mother reports that she and her sister home-schooled the student for the remainder of the 2011-12 school year and for the 2012-13 school year.

During the student's third grade year (2013-14) he was again home schooled but began attending a private parochial school for an hour a day. His level of participation in the private school increased to three hours a day by the end of the school year.

During the 2014-15 school year (4th grade), the student started his school day at the parochial school, leaving before lunch to return home. The parochial school/homeschool split continued for the student's 5th grade year. He remained at the parochial school through lunch each day, ultimately spending about two thirds of the day at the school. During the 2016-17 school year (6th grade), the student attended a full day of classes at the parochial school.

According to the student's mother, the student continues to demonstrate social/emotional concerns which she believes are exacerbated by his perfectionism. The student's behavior became an increasing concern during the 2016-17 school year. He dropped out of his band class in December because he found it too stressful, and he has made threats of self-harm. The parent reports that the 2017 summer school experience for the student was particularly difficult.

Because of their concerns regarding the student's state of mind, the parents made the decision to rent an apartment in Lenexa, Kansas so that the student could participate in the day program at KSSB but return to the apartment at night rather than staying in the dormitory as a resident student. The student's mother

drives him to and from school each day – a total distance of approximately 50 miles.

According to his mother, the student had not, as of October 9, 2017, returned to his home in Dodge City, but the student's father and grandfather have driven to Lenexa to see the student and his mother and to provide the student's mother with work-related materials.

Issue

In their complaint, the parents raise the following issue:

The district has failed to adequately reimburse the parents for costs associated with transporting the student between his home and the Kansas State School for the Blind (KSSB).

Applicable Laws and Regulations

Federal regulations, at 34 C.F.R. 300.101, require public schools to make a free appropriate public education (FAPE) available to children with disabilities and, under 34 C.F.R. 300.17, defines FAPE in part as special education and related services provided in conformity with an IEP. One of the most important considerations for IEP teams in developing an IEP is the special education, related services, and supplementary aids and services to be provided to the student or on behalf of the student.

Kansas regulations, at K.A.R. 91-40-1(ccc) define "related services" as "developmental, corrective, and supportive services that are required to assist an exceptional child to benefit from special education." At K.A.R. 91-40-1-(ccc)(W), the regulations include "transportation" among several "related services."

While a school district is required to provide transportation from the child's home to the site at which the child is to be provided with special education and related services, and from that site to the student's home, state law is clear that a school district is not required to transport a child to another location outside of the district of residence (K.A.R. 91-40-47(c)).

Content of Current IEP and Related Documentation

A Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent was signed by the parent on March 28, 2017. That document detailed a proposal by the district intended to address corrective actions associated with a formal complaint filed by the parents in February of 2017. The notice stated that the student would attend KSSB during the 2017-18 school year. According to the Prior Written Notice, an action plan had previously been developed in collaboration with KSSB on February 16, 2017, and a subsequent IEP Team meeting would be held with KSSB to facilitate the change.

The March 17, 2017 Prior Written Notice further stated that "_KACD #___ will pay parents roundtrip mileage (674 miles) at the IRS standard mileage business rate each time that (the student) has to be transported to KSSB for school and

each time (the student) has to be transported home from school. For the calendar year 2017 this rate is 53.5 (cents) per mile."

On April 28, 2017, the student's IEP Team recommended that he receive "special education and related services at KSSB from 8/14/17 through 4/28/18."

The "Anticipated Services to be Provided" section of the April IEP contains the following statement regarding "Special Education/Related Services:"

"Transportation is provided by the district as delineated in the Prior Written Notice ('_KACD #___ will pay parents round trip mileage (674 miles) at the IRS standard mileage business rate each time that (the student) has to be transported to KSSB for school and each time (the student) has to be transported home from school. For the calendar year 2017 this rate is 53.5 cents per mile.')"

The Conference Summary and Parent Consent form completed at the April 2017 IEP Team meeting includes the note that "(the student) will receive services at KSSB next school year as described in his IEP, (but) parents are thinking (the student) will not stay in the dorm (at KSSB); they are working on other arrangements."

Parents' Position

The parents contend that their interpretation of the IEP statement regarding mileage/transportation reimbursement varies from that of the district. They assert that the student's mother has regularly provided his transportation from their apartment in Lenexa to school at KSSB and the parents should receive reimbursement for that mileage. In support of their contention, they have provided the district with attendance dates for the student. The parents assert that the district is unwilling to consider all costs associated with transporting the student to and from KSSB when determining the reimbursement to be paid to the parents and believe that they are being inadequately compensated.

According to the student's mother, the family is incurring the costs related to the student's placement at KSSB only because the district is unable to adequately serve the student in his home district. The parents assert that when they told the members of the IEP Team in April that they were considering options other than having the student stay in the dorm, no one disagreed with their comments.

The student's mother acknowledges that she signed a prior written notice form specifying the level of reimbursement the parents were to receive for transporting the student to KSSB but states that she did so in order to move the process of KSSB placement forward.

It is the contention of the parents that by providing the district with dates the student has been in attendance at KSSB, they have done all that is necessary to support their request for reimbursement of their transportation costs, and the district has failed to follow through in providing any reimbursement for the 2017-18 school year.

District's Position

It is the district's position that it stands willing to provide the parents with reimbursement as specified in the IEP. The district contends, however, that the parents have not provided requested information needed to secure travel reimbursement.

It is the district's position that the parents have failed to provide any specific information regarding the dates the student was transported from his home in Dodge City to KSSB. In an email dated September 7, 2017, the Director of _KACD asks the student's mother, "Did you travel round trip from Dodge City to KSSB on August 13, August 18, and August 25? If so I will send the reimbursement request for 2022 miles…for payment…If those dates are incorrect please send the correct dates of round trips. Each month I will need an email stating which weekends you traveled round trip."

A follow-up email dated September 14, 2017 from the Director to the student's mother states, "We will pay you for actually (sic) mileage when you transport (the student) to and from Dodge City for school. Can you send me a list of days when you transported him from DC to KS for school. Our board meeting is next Tuesday so I will need your mileage before the end of the day on Monday in order to get it taken care of this month." To date, the parent has only provided the district with dates the student has been in attendance at KSSB (per an email from the parent to the Director dated September 6, 2017).

Findings

In their complaint, the parents state that their "home address is 810 Ragan Road, Dodge City, KS 67801." The student's April 28, 2017 IEP and a Prior Written Notice form signed by the parents on March 28, 2017 state that the district will pay roundtrip mileage each time the student has to be transported to KSSB for school and each time he has to be transported "home." Neither document obligates the district to cover any additional costs.

The decision to rent an apartment closer to KSSB to facilitate a more home-like setting for the student rather than having him live in the dormitory at KSSB was made by the parents in what they believed was the best interest of their child. While this investigator respects the parents right to make this choice and acknowledges the sacrifice the family has made to act on their decision, the law does not obligate the district to do more than what was recommended by the IEP Team and agreed to by the parents in writing – specifically, per mile reimbursement to the parents for providing transportation for the student to and from his home in Dodge City to KSSB.

The district has made what this investigator believes to be a reasonable request of the parents to provide a record of the dates they transported the student from Dodge City to KSSB. The student's mother acknowledges that the student has not returned to Dodge City since he and his mother set up residence in Lenexa, Kansas. The parents have not to date provided the district with a specific record of the date of the student's initial trip to the Kansas City area to start the school

year. Certainly, the district should reimburse the parent at the established rate for the cost of that trip once the parent has provided the district with specific information regarding the date of the student's travel to KSSB to start school.

Under the circumstances outlined above, a violation of special education laws 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 laws and regulations on issues presented in this complaint. Therefore, no corrective action is 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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____
Diana Durkin, Complaint Investigator

(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).

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced on September 28, 2017, with ____ and ____ ____ filing a complaint on behalf of their son, _____, against Unified School District No. ___, _____ Public Schools. The complaint (18FC___-001) alleged that the school district failed to adequately reimburse the parents for costs associated with transporting the student between his home and the Kanas State School for the Blind (KSSB).

An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services Team of the Kansas State Department of Education. Following the investigation, the complaint investigator issued an initial report on October 25, 2017, addressing the complaint. That report concluded that there were no violations of special education requirements.

Thereafter, on November 7, 2017, the parents filed an appeal of the complaint report. The district provided a written response to the parents' appeal. Upon receipt of the appeal, an Appeal Committee was appointed pursuant to Kansas regulations, at K.A.R. 91-40-51(f). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

DISCUSSION OF ISSUE ON APPEAL

In the initial complaint, the parents alleged that the district failed to adequately reimburse the parents for the cost of transporting their child to the KSSB. The investigator determined the allegation was not substantiated. The parents appealed the conclusion of the investigator that there was no violation of special education laws or regulations.

In a previous complaint, 17FC___-001, alternative corrective actions were ordered. The district was ordered to either: (a) obtain written parent consent for an action plan developed jointly by district officials, the parents, and staff at the KSSB; or (b) perform other corrective actions, as specified in the report.

On March 28, 2017, the district sent the Kansas State Department of Education (KSDE) a copy of a Prior Written Notice and Request for Consent (PWN), dated March 22, 2017, specifying that the parties had agreed to an action plan. With regard to the transportation issue, the Prior Written Notice says the cooperative will "pay parents roundtrip mileage (674 miles) at the IRS standard mileage business rate each time that [the student] has to be transported to KSSB for school and

each time [the student] has to be transported home from school." On March 28, 2017, the student's mother agreed, and provided written consent on the consent portion of the Prior Written Notice. Upon receipt of a copy of this signed notice, KSDE closed the previous complaint.

Subsequently, on the basis of the March 22, 2017, PWN, a new IEP was developed at a meeting on April 28, 2017. Under the title of "Special Education/Related Services," the IEP says "Transportation is provided by the district as delineated in the Prior Written Notice ("SKACD #613 will pay parents round trip mileage (674 miles) at the IRS standard mileage business rate each time that [the student] has to be transported to KSSB for school and each time [the student] has to be transported home from school. For the calendar year 2017 this rate is 53.5 cents per mile.)" In addition, after the meeting on April 28, 2017, a document titled "Conference Summary and Parent Consent" was drafted with all of the requirements of a PWN. That document stated that the student "will receive services at KSSB next school year as described in his IEP." The parent also provided written consent on that document on May 9, 2017.

For reasons specified in the "Background Information" portion of the initial report, the parents elected to rent an apartment in Lenexa and provide daily transportation for the student, to and from the apartment and KSSB. The investigator found that this was an election the parents could make, but that the district was not required under the agreement, as specified in both the PWN and the IEP, to pay for these trips to and from the apartment and KSSB. The parents appeal that decision.

In the parents Notice of Appeal, the parents assert a number of challenges to statements in the initial report, including statements regarding fact, interpretation, and law. However, the Committee determined that it must give primary consideration to the words actually placed in the IEP. In Sytsema v. Academy Sch. Dist. No. 20, 538 F.3d 1306, 50 IDELR 213 (10th Cir. 2008), the United States Circuit Court of Appeals for the 10th Circuit stated that the IEP is the written offer of a Free Appropriate Public Education (FAPE), and when considering the content of the IEP, it will restrict its consideration only to the written IEP, and will not extend its review to evidence extraneous to the IEP. The Committee notes that Kansas is in the 10th Circuit and the rulings of the 10th Circuit are law in Kansas. Accordingly, the Committee is bound by law to restrict its review of the issue presented in this appeal to the language in the IEP. The IEP says: "SKACD #613 will pay parents round trip mileage (674 miles) at the IRS standard mileage business rate each time that [the student] has to be transported to KSSB for school and each time [the student] has to be transported home from school."

Ordinarily, the Committee will construe any reasonable ambiguity in an IEP against the writer of the IEP, which would be the school district's IEP team. Even using that standard, however, the Committee does not see sufficient ambiguity in this IEP to overturn the decision in the initial report. The inclusion of the use of the term "round trip mileage (674 miles)" almost certainly refers to travel from the student's home in _____ to KSSB. Because this travel is from ____, it is unreasonable to conclude that this travel would occur daily to and from KSSB. There is not sufficient ambiguity to interpret this language in the IEP in any other way. The Committee noted that the student's mother gave her written consent for the statement in the IEP on two occasions, the PWN on March 22, 2017, and the Conference Summary and Parent Consent form on May 9,

2017 (the latter stating that the student would receive services at KSSB "as described in his IEP.")

The parent's notice of appeal also appears to make an assertion that there should be no requirement for the parents to document or otherwise verify travel expenses because the IEP does not require verification. In her initial report, the investigator stated that the district's request to provide a record of the dates the parents transported the student from _____ to KSSB and back was a reasonable request. The Committee agrees with the investigator. The IEP requires the district to reimburse "round trip mileage (674 miles)" each time the student has to be transported to and from home and KSSB for school. The district's requirement that there be some documentation of this travel is not unreasonable.

Finally, the Committee would like to remind both parties that an effective IEP requires periodic review. If at any time a parent, or school officials, believe an IEP is not adequately meeting the educational needs of a student, they may request an IEP meeting to address those concerns.

CONCLUSION

For the reasons stated above, the committee sustains the decision of the complaint investigator, in its entirety. This is the final decision of the State Department of Education with regard to this complaint. Kansas law allows no further review.

This Final Decision is issued this 21st day of November, 2017.

APPEAL COMMITTEE:

_____
Laura Jurgensen

_____
Julie Ehler

_____
Stacie Martin

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KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND
TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
_____ UNIFIED SCHOOL DISTRICT #___
ON OCTOBER 18, 2017

DATE OF REPORT: NOVEMBER 16, 2017

This report is in response to a complaint filed with our office by _____ on behalf of her daughter, ____. ____ will be referred to as "the student" in the remainder of this report. Ms. ____ will be referred to as "the parent."

Investigation of Complaint

On October 27, 2017, Diana Durkin, Complaint Investigator, spoke in a conference call with _____, Director of the Northwest Kansas Educational Service Center, and with _____, Assistant Director of the Service Center. The investigator again spoke by telephone with the Director on November 3, 6, and 13, 2017. On October 27 and November 3, 2017, the investigator spoke by telephone with the student's mother.

In completing this investigation, the complaint investigator reviewed the following material:

- _____ USD ___ 2016-17 Calendar
- Behavior Intervention Plan dated March 21 , 2016
- Attendance records for the 2016-17 school year
- Behavior Intervention Plan dated September 7, 2016
- Wechsler Intelligence Scale for Children — Fifth Edition Interpretive Report dated October 6, 2016
  Wechsler Individual Achievement Test — Third Edition Score Report dated November 22, 2016
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated August 23, 2016
- Notice of Special Education Meeting dated December 2, 2016
- Evaluation and Eligibility Team Report dated January 17, 2017
- IEP for the student dated January 17, 2017
- Prior Written Notice for Identification, Initial Services, Educational Placement,

Change in Services, Change of Placement, and Request for Consent dated January 17, 2017

- Behavior Support Plan dated January 18, 2017
- Notice of Special Education Meeting dated October 1 1 , 2017
- IEP for the student dated October 24, 2017
- Meeting Notes from the October 24, 2017 IEP Team Meeting
- Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change of Placement and Request for Consent dated October 24, 2017

Background Information

This investigation involves a 12-year-old girl who is enrolled in the 7th grade. The student has been diagnosed with Hashimoto's Disease — a condition that results in an underactive thyroid. She has also been diagnosed as having disruptive mood dysregulation disorder (DMDD), a mental disorder in children and adolescents characterized by a persistently irritable or angry mood and frequent temper outbursts that are disproportionate to the situation and significantly more severe than the typical reaction of same-aged peers. Additionally, the student has been diagnosed with a Personality Disorder (a type of mental disorder in which the individual has a rigid and unhealthy pattern of thinking, functioning and behaving and therefore has trouble perceiving and relating to situations and people). She experiences Anxiety and Depression and has been identified as having Obsessive Compulsive Disorder (OCD) and Oppositional Defiant Disorder (ODD).

The student has a long history of behavioral issues. A behavior plan was first put into place for the student when she was in second grade, and plans continued to be implemented for grades 3, 4, 5, and 6.

Records indicate that the student has a history of poor school attendance — in some instances because of disciplinary removals. During the 2015-16 school year, she missed approximately 40 days of school; included in that total were three out-of-school suspensions. When in school, the student often has not completed and/or turned in assignments, and she has begun to fall behind her peers academically.

The student's mother reports that in September of 2016, she and the student's father referred their daughter for evaluation to determine her eligibility for special education service. An evaluation consent form signed by the parents on September 6, 2016, states that the parents were concerned about the student's "emotional outbursts and behavior issues."

The student had missed 32 mornings of school and 30 afternoons of school at the time of an evaluation/eligibility meeting on January 17, 2017. According to the report of that meeting, the student did "not like to attend (school), makes excuses and in order to avoid major blow ups, her parents keep her home when she has a bad morning."

Records indicate that during the 2016-17 school year, the student missed a total of 29 full days of school and 13 half days during the first semester. She missed 24 full days of school and 8 half days during the second semester. None of these absences was due to disciplinary action. According to her special education teacher, the parents would keep the student at home in the morning if she was having a bad day and bring her to school later in the day if they felt she would be able to come without incident. This arrangement was by report of the district made between the parents and the building principal.

By the time of an annual review of the student's IEP on October 24, 2017, the student had already missed 12 days of school.

Issues

Any individual or organization may file a formal complaint if they believe that the school district is not complying with Federal or State laws or regulations relating to special education. The formal complaint must be for a situation that occurred during the past year (K.A.R. 91-40-51 (b)(l)). The formal complaint must be in writing and signed by the person or organization making the complaint. The complaint must state that the school is not complying with the requirements of IDEA, the State Special Education for Exceptional Children Act, or the corresponding Federal or State regulations and give the facts upon which the statement is based (K.A.R. 91-40-51 (a)).

In her signed, written complaint, the parent referenced general concerns regarding the suspension of the student as far back as the student's second grade year and stated that the parents "have many other situations to add to this claim."

In a telephone conversation with the parent on October 27, 2017, the complaint investigator explained the one-year time restriction outlined in state regulations. The parent was given the opportunity to provide the investigator with details relevant to the "other situations" mentioned in the complaint.

The investigator then contacted the Director of the Northwest Kansas Educational Service Center on October 27, 2017. The Director indicated that she too had spoken with the parent by telephone in regard to the complaint and had been provided with information regarding additional issues.

With the agreement of the Director, the parent's initial complaint was amended to include a total of four issues.

Issue One: Behavior plans for the student focus on consequences and do not include positive supports such as redirection or instruction in coping skills.

When developing an IEP, an IEP Team must consider a number of special factors in order to assure that the special education and related services needs of the child are addressed. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral

interventions and supports, and other strategies, to address the behavior (K.S.A. 72-987(d)(4)). The focus of behavioral interventions and supports in the IEP is prevention of the behavior, not just provision for consequences subsequent to the behavior. This typically means that the team will need to attempt to identify the function of the behavior, usually through a functional behavioral assessment, and develop strategies to prevent the behavior from occurring again in the future.

January 2017 IEP

According to the "Social Emotional Status" section of the student's January 17, 2017 IEP, "the student's behavior impeded...her learning or that of others." It was noted in the document that the student had a Behavior Support Plan. The "impact of (her) exceptionality on progress in the general education curriculum was explained as follows:

> "When (the student) does not attend school, she does not do her school work and/or complete her assignments and turn them in. She does not follow the school rules when they are not accommodating to her wants. These factors are negatively impacting (the student's) performance in school."

The IEP Team determined that this need would be met through "Supplemental Aids and Supports." No goals were developed.

The January 2017 IEP included a 'Behavior Support Plan" that was to be used for "2 wks." That plan identified three "problem behaviors."

1. "(The student) refuses to come to school.
2. (The student) exhibits non-compliance behaviors such as refusal to work, leaving the classroom/school without permission and not following staff directives.
3. (The student) uses physical aggression during emotional outbursts."

Three "replacement behaviors" were listed:

1. "(The student) will follow district discipline and attendance policies.
2. (The student) will comply with adult requests and school rules.
3. (The student) will express her anger and frustration in appropriate ways."

"Goals" were established as follows:

1 . "(The student) will be in attendance at school and on time as measured by daily attendance records.
2. (The student) will follow teacher directives, complete work in the time frame set by accommodations in the IEP." (The student was to turn in any assignments not completed during the week on the following Monday by 7:30 AM.)

3. (The student) will exhibit an increase in self-regulation skills as evidenced by a decrease in verbal and/or physical aggression/threats as measured by regular data collection."

The plan outlines "precipitating factors" likely to trigger problem behaviors and notes that school personnel will be provided with recommendations for ways to address the student's emotional and academic needs. Under 'Explicit Instructions," the plan states that a "behavior consultant will work with (the student) to teach her coping strategies to deal with emotional regulation and identify acceptable ways to express her needs." The "Antecedent" section of the plan specifies that the student would "receive instruction on regulation from (the) Behavior Consultant and reinforcement from school personnel.. .and.. .will be allowed to go to a designated location to reduce anxiety/frustration so she can return to class and continue her instruction."

Under the "Reinforcement" portion of the "Intervention" section, the January 2017 Behavior plan states, "School personnel will use opportunities to provide positive behavior supports to reinforce positive behavior responses. A rubric will be developed to reinforce positive behavior by (the student) having opportunities to earn rewards agreed upon by (the student), the Behavior Consultant and School Personnel."

October 2017 IEP

The "Social Emotional Status" section of the student's October 24, 2017 annual IEP also indicates that her behavior was impeding her learning or that of others and again states that the IEP included a Behavior Support Plan. The impact of the student's exceptionality on her progress in the general education curriculum is explained as follows:

> "When (the student) is in a dis-regulated state, she does not do her school work and/or complete her assignments and turn them in. Requests for compliance can escalate her refusal behavior resulting in aggressive behavior and she will leave school property. If she misses school due to this, she does not do her schoolwork while away. She does not follow the school rules when they are not accommodating to her wants and lacks self-regulation to handle school demands properly. These factors are negatively impacting (the student's) performance in school."

The October 24, 2017 Behavior Support Plan for the student notes that the student was taking medication to help alleviate her emotional stresses and balance her physical conditions (as was the case at the time her January 2017 Behavior Support Plan was developed).

The October 2017 Behavior Support Plan contained the following positive supports to address her needs:

- "Behavior Consultant will provide school personnel with recommendations for ways to address (the student's) emotional and academic needs."

- "(The student) will be provided with calming locations in the school building that she can go to self-regulate. She will use her specified 'calming notebook' as a signal to the classroom teacher that she is leaving to calming location."
- "(The student) will be taught techniques for relaxing when she becomes frustrated or upset."
- "The behavior consultant will work with (the student) to teach her coping strategies to deal with emotional regulation and identify acceptable ways to express her needs. The behavior consultant and special education staff will remind (the student) of what she should do and where she should go (if necessary) to self-regulate. The behavior consultant and Special Education staff will go over the steps she needs to follow if she wants to leave."
- "(The student) will receive instruction on regulation from Behavior Consultant (20 minutes every week for 35 weeks) and reinforcement from school personnel."
- "..(the student) will be allowed to go to a designated location to reduce anxiety/frustration so she can return to class and continue her instruction."
- 'A weekly goal for self-regulation progress will be set. (The student's) calming notebook will be reviewed by (the) Behavior Consultant/Special Ed staff on Friday to reinforce positive selfregulation by (the student) and set next weekly self-regulation goal. If she achieves her weekly self-regulation goal by Friday, then she will have earned an agreed upon reinforcement."

When developing IEPs for the student in January and October 2017, both IEP teams determined that the student's behavior interfered with her learning or that of others. Both teams developed behavior support plans. The student's January 17, 2017 behavior support plan and her October 24, 2017 behavior support plan included positive behavioral supports. Under these circumstances, a violation of special education laws and regulations is not substantiated on this issue.

Additional Comments

While behavior support plans have been put in place for this student, the investigator found no record that the January 2017 or October 2017 plans were either data-driven or based upon any Functional Behavior Assessment (FBA). In the absence of purposeful data collection, it will be difficult for the IEP Team to determine whether the interventions outlined in her current IEP are having any meaningful impact in meeting her identified behavioral needs.

Issue Two: The district made changes to the student's IEP without the written consent of the parent.

Kansas statute, K.S.A. 72-988(b)(6), provides that parents have the right to consent, or refuse to consent, to any substantial change in placement of their child or to any material change in services as outlined in the student's IEP. Also, K.A.R. 91-40-27 (a)(3) states that .an agency shall obtain written parental consent before

making a...substantial change in the placement of. ...an exceptional child..." As defined by K.A.R. 91-40-1 (sss) "'(s)ubstantial change in placement' means the movement of an exceptional child, for more than 25 percent of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment." K.A.R. 91-40-27(mm) defines a "material change in services" as an "increase or decrease of 25% or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child."

The January 19, 2017 IEP for the student states that the student was to receive "direct support in the interrelated classroom 60 minutes 5 days a week" and 60 minutes of special education service 5 days per week in the regular education classroom. Additionally, the student was to receive 10 minutes per week of indirect Psychological Services, and 20 minutes per week of Social Work Services.

On September 5, 2017, a meeting was held to discuss (among a variety of other topics) a change to the student's daily schedule. The student's special education teacher proposed pulling the student out of her general education English and Math classes to receive more support in the interrelated classroom. According to notes from the meeting, the special education teacher planned to schedule an IEP Team meeting but wanted to wait for a "couple weeks" to "see if the (change in schedule) will work." While there is no indication in the meeting notes that the parents objected to the proposed changes to the student's schedule, the IEP was not revised at the time of this meeting, and parents were not provided with prior written notice of the proposed change in placement.

During the weeks prior to a review of the student's IEP, additional changes were made to the student's schedule. The student was for a time pulled from her PE class due to problems with peers.

An IEP Team meeting scheduled for October 1 1 , 2017 was cancelled by the parents, and the meeting was rescheduled for October 24, 2017. Between September 5th and October 1 I th the student was absent for 7 days and tardy for 7 additional days, but the schedule changes outlined above were implemented when the student was in attendance.

On October 24 th , the IEP Team formally proposed changes to the student's IEP. The IEP stated that the student would now receive 147 minutes of special education services in the resource room and 98 minutes of special education services in the regular education classroom setting. Additionally, it was proposed that the student receive 20 minutes per week of direct Counseling services and 5 minutes per week of indirect Counseling services. Meeting notes indicate that the student's return to her PE class was discussed. Meeting notes also indicate that the parents wanted to review the draft IEP with Families Together before giving written consent for a change in services and placement. According to the meeting notes, "the new plan will not begin until consent is signed" (although in fact changes had been implemented prior to the IEP Team meeting).

In a telephone conversation with the complaint investigator on October 27, 2017, the parent stated that she believed that the student had benefitted from the change in her schedule. The parent asserted that she had felt "threatened" by the district when she was told that the student would have to return to her original class schedule unless the parent gave written consent for changes that had already been implemented.

On October 30, 2017, the parent gave written consent for the student to spend an increased amount of time in the resource room and for the student to receive special education support in the general education setting. The prior written notice form provided to the parent did not reference the discontinuation of Psychological and Social Work services nor the addition of Counseling Services to the student's educational program which were reflected in the October 24, 2017 IEP.

The district failed to obtain the informed written consent of the parent before making both a material change in services and a substantial change in placement for the student. Specifically, the district more than doubled the amount of time the student was spending in the resource room, increased the amount of special education service in the general education setting, removed Psychological Services and Social Work services to the student and added Counseling services. Prior written notice was provided to the parents regarding the schedule change increasing the student's time in the resource room, but that notice was not given at the time the change was originally made. Additionally,

the district provided no evidence that the parents have yet been given notice of changes with regard to Psychological Services, Social Work Services, and Counseling Services.

The district erred in making changes to services or placement without first providing written notice and obtaining the written consent of the parent. The parent felt that the district had "threatened" her when telling her that unless she gave her written consent for changes, the student's schedule would have to revert to the level outlined in the student's January 2017 IEP. However, in order to bring itself into legal conformity, the district had no option but to reinstate services as outlined in the January 2017 IEP unless it obtained the informed written consent of the parent.

Under the circumstances outlined above, a violation of special education laws and regulations is substantiated on this issue.

Issue Three: The district failed to protect the privacy of the student

Districts are required to maintain confidentiality regarding the educational records of students. These fundamental rights are described in the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended (2009).

The parent states that on the occasion of a behavioral incident involving the student in October 2017, she was called to the school. According to the parent, she entered the main office of the school and proceeded on to the office of the principal. The parent contends that the door to the principal's office was open and

a student was sitting outside of the office. The principal and a Deputy Sheriff were inside the office viewing a videotape of the behavioral incident.

It is the contention of the parent that the open door allowed the student sitting outside the office to overhear the discussion of the principal and the deputy and may have resulted in her daughter becoming the target of school gossip.

The district contends that there was no breach of student privacy. It is the position of the district that the principal and the deputy had gone into the principal's office only to confirm that the behavioral incident had been captured on tape. The district asserts that no specific discussion regarding the student took place.

No evidence was presented by the parent to support her contention that the open door to the principal's office in any way compromised the student's right to privacy. A violation of special education laws and regulations is not substantiated on this issue.

Issue Four: The district did not in a timely manner complete the evaluation to determine whether the student was eligible for and in need of special education services.

A referral for an initial evaluation may come from a variety of sources including a child's parents. Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describes any evaluation procedures the school proposes to conduct (34 C.F.R. 300.3046)). The school must obtain informed written consent from the parent of the child before conducting the evaluation (34 CER. 300.9).

Kansas has established a 60 school-day timeline consistent with federal regulations (34 CER. 300.301 (c)). The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation and ends with the implementation of an IEP if the child is found eligible for special education services unless the district can justify the need for a longer period of time or has obtained written parent consent for an extension of time.

There are only three specific instances where an extension of the 60 school-day timeline may be justified:

1. The parent of the child repeatedly fails or refuses to produce the child for the evaluation; or,
2. If the child enrolls in a new district after the evaluation has begun and before determination of eligibility, however, the new district is required to make sufficient progress to ensure a prompt completion of the evaluation, and the parent and the school district must agree to a specific timeline for completion; or
3. If the parent and the school agree in writing to extend the timeline (34 C.F.R.300.301

A district special education teacher hand-delivered a Prior Written Notice for

Evaluation or Reevaluation and Request for Consent form to the parents on August 23, 2016. The parents signed and dated the form on September 6, 2016.

Cognitive assessment of the student was completed on October 6, 2016. Achievement testing was conducted on November 22, 2016. Communication skills were also assessed.

The district provided the parent with prior written notice of a meeting to discuss the student's initial evaluation and to determine her eligibility to receive special education services. On December 2, 2016, the district gave written notice of a December 7, 2016 meeting to discuss the results of the evaluation and to develop an IEP for the student. That meeting would have been held 60 school days after the parents had given their written consent for the evaluation.

The "Notice of Special Education Meeting" form reflects that on the day of the meeting, the parents "cancelled because (the student) was having an emotional outburst so they couldn't leave her at home alone."

The meeting was rescheduled for December 12, 2016. Parents were unable to attend that meeting because they were taking the student out of state for a doctor's appointment. According to the meeting notice form, the parents told the district that they would like to meet "after Christmas vacation," and the meeting was rescheduled for January 17, 2017 — 77 school days after the parents gave written consent for the evaluation. An IEP Team meeting was then held on January 19, 2017.

Records indicate that the parents cancelled a meeting that was to have been held on the 60 th school day following their provision of written consent for evaluation and then cancelled a second meeting that would have been held on the 65th school day following the provision of consent. Records also indicate that the parents requested that the evaluation meeting be postponed until after January 2, 2017. However, 13 more school days went by in January 2017 and a total of 79 school days passed before an IEP was developed for the student and the evaluation process was completed — well beyond the established 60 school day timeline. No evidence was provided by the district that the parent and district had agreed in writing to an extension of the 60-school day timeline as required under CF.R 300.301 (d). Under these circumstances, a violation of special education laws and regulations is substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations. A violation has occurred with regard to

- K.A.R. 91-40Q6(a) which requires districts to provide parents with Prior Written Notice of any action proposed or refused related to identification, evaluation, placement, or the provision of FAPE,

- K.A.R* 91-40-27 (a)(3) which requires districts to obtain the written consent of the parent before making a substantial change in placement or a material change in services for a student, and

- (34 CER. 300.301 (c) which requires that an initial special education evaluation be completed within a 60 school-day timeline.

Therefore, USD #___ is directed to take the following actions:

1) Submit, within 20 days of the receipt of this report, a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will comply with
    a. K.A.R. 91-40-26(a) which requires districts to provide parents with Prior Written Notice of any action proposed or refused related to identification, evaluation, placement, or the provision of FAPE;

    b. K.A.R. 91-40-27 (a)(3) by obtaining the written consent of the parent before making a substantial change in placement or a material change in services for a student; and

    c. (34 CER. 300.301 (c) by completing initial evaluations within a 60 school-day timeline unless an extension of that timeline is agreed upon in writing by both the district and the parents.

2) Within 10 school days of the receipt of this report, provide to these parents written notice of the district's proposed changes to the student's IEP with regard to Psychological Services, Social Work Services, and Counseling services. This notice shall include all of the components of a Prior Written Notice.

    a. Within 5 days of the provision of notice outlined above under Item 2, provide Early Childhood, Special Education, and Title Services with a copy of that notice.

3) Within 20 school days of the receipt of this report, Provide Early Childhood, Special Education and Title Services with a plan for the training of special education staff members in USD ___ regarding a) initial evaluation timelines and b) the provision of prior written notice and written consent before making a substantial change in placement or a material change in services for a student with an IEP.

Further, USD #___ shall, within 10 calendar days of the date of this report, submit to Early Childhood, Special Education and Title Services one of the following:

a) A statement verifying acceptance of the corrective action or actions specified in this report;

b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (c).

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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

Diana Durkin

Diana Durkin, Complaint Investigator

(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

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON OCTOBER 18, 2017

DATE OF REPORT: NOVEMBER 18, 2017

This report is in response to a complaint filed with our office by ____ and ____ _____ on behalf of their son, _____ _____. In the remainder of this report, _____ _____ will be referred to as "the student" while _____ and _____ _____ will be referred to as "the mother" or the "father" respectively, or "the parents."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, exchanged emails with USD #___ on October 26, November 1, November 3, November 7, and November 8, 2017. In addition, USD #___ made the following staff persons available to be interviewed by the Complaint Investigator via telephone on November 14 and/or November 15, 2017:

- AG, Mediation and Due Process Supervisor
- LW, Assistant Principal
- K.B., School Psychologist
- JE, Social Worker
- JH, Special Education Executive Coordinator

The Complaint Investigator exchanged emails with the parents on November 1, November 2, November 5, November 11, and November 14, 2017. The parents were given the opportunity to arrange an interview in the initial correspondence outlining the plan for the investigation dated November 1, 2017; however the parents did not arrange for an interview and were therefore not interviewed during this investigation.

In completing this investigation, the complaint investigator reviewed the following material:

- Formal Complaint Request Form and accompanying parent documentation dated October 16, 2017 and received by the Kansas State Department of Education on October 18, 2017
- Email from parent to Nancy Thomas dated November 14, 2017 including questions to be answered in the complaint report
- Report of Complaint dated September 2, 2016
- Report of Complaint dated September 11, 2017
- Individualized Education Program (IEP) for the student dated December 14, 2015
- IEP for the student dated December 13, 2016
- Email exchange between K.B., LW, SA, and Krista Egan dated February 3, 2017 describing interactions between Ms. B and the student
- Provider Student Log contained in the computerized Synergy Information System for Counseling &/Or Ricks Factor Reduction (indiv) services dated August 30, 2016 through February 3, 2017
- ____ Public Schools Student Support Services Newsletter dated November 2017
- USD #___ School Board Policies P1460 and P1461and Administrative Implementation Procedures (AIP) related to K.S.A. 72.111and K.S.A. 72-977
- Email between the ____ High School Registrar and the Supervisor of Student Records & Enrollment dated September 18, 2017 showing the student has not attended school during the 2017-18 school year
- ____ High School Secondary Withdrawal Slip showing the student never enrolled for the 2017-18 school year and noting absences between August 23, 2017 and September 15, 2017
- District Attorney's Truancy Referral Form for the student sent to Chris Champagne, Truancy Officer for USD #___
- Email from AG to the parents dated August 24, 2017 indicating the enrollment process is not complete and describing the truancy reporting requirement
- Email from the parents to AG dated September 29, 2017 requesting copies of dated withdrawal documents
- Emails from AG to the parents dated October 3, 2017 summarizing withdrawal, enrollment, truancy reporting, and revocation of consent
- Student schedule for tenth grade during the 2017-18 school year
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated December 14, 2015

Background Information

This investigation involves a sixteen year-old student who lives within the boundaries of USD #___. Records indicate the student was retained in kindergarten and attended three different elementary schools for grade kindergarten through fifth grade. A 504 plan was initiated during the student's fifth grade year due to concerns with social issues and lack of organization. The student began sixth grade at _____ Middle School and his parents report that due to bullying, the student was then enrolled in the Word of Life School where he finished sixth grade and reportedly did "great" and was socially interacting with all age levels. The student attended seventh grade at the Word of Life School and was placed in the "PACE" program to assist the student to catch up with the grade level curriculum. The student then enrolled in eighth grade at USD #___ for the 2015-16 school year and attended _____ for STEM and the _____ Middle School. During the 2016-17 school year, the student attended ____ High School for ninth grade and is eligible to attend ____ High School for tenth grade during the 2017-18 school year.

Documentation shows the student received medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and autism in July 2015 from Dr. Shelby Evans, PhD., psychologist at The Therapy Center. Records indicate the student continued to have a 504 plan and a Section 504 Behavior Intervention Plan during the first semester of the 2015-16 school year. On December 7, 2015, the student was initially found eligible for special education in the exceptionality category of Other Health Impaired (OHI) and Autism and that the student was in need of special education services. An initial IEP team meeting was held on December 14, 2015 and an IEP developed that would provide special education instruction and counseling as a related service to the student. The parents and USD #___ participated in mediation to review and revise that IEP and the parents provided consent for initial services on February 12, 2016. The annual IEP review was completed on December 13, 2016 and that IEP continued to require special education instruction and counseling as a related service to the student.

Issues

The complainant shared multiple issues in the formal complaint received by the Kansas Department of Education on October 18, 2017. The Complaint Investigator initially identified six issues to be investigated and noted several other allegations would not be investigated. The allegation that school officials

made false statements to Mr. Ward do not fall under the jurisdiction of the IDEA. The allegation that school officials made false statements to this investigator during the course of the child complaint investigation conducted during August and September 2017 in violation of K.S.A. 21-5904(1)(A) was also not investigated as that statute covers interference with Law Enforcement and does not fall under the jurisdiction of the IDEA. The allegation that USD #___ did not appropriately consider the need for assistive technology and a behavior intervention plan at the IEP meeting held in December 2016 will not be investigated as this allegation was previously investigated in the Report of Investigation dated September 11, 2017 in Issue One. After the parents provided additional information and clarification, two additional issues were identified and included in the investigation. The initial six issues were shared with both parties on November 1, 2017 and the additional two issues were shared with both parties on November 7, 2017.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete an adequate Functional Behavioral Assessment of the student during the past 12 months.

Findings:

The parents believe that USD #___ has not been able to develop an effective Behavior Intervention Plan (BIP) for the student due to an incomplete and inadequate functional behavioral assessment (FBA). The parents state "*Staff was not able to have an effective plan due to an incomplete FBA. District has attempted 2 separate FBA's over the past 2 school years and gave no consideration at understanding "why" behaviors occur. They list "what" behaviors occur and "how" the behaviors occur. But parents haven't been presented with FBA that addresses "why" or attempts to understand "why" behaviors occur."*

The IDEA does not provide any guidance with respect to the substance of the FBA or any description of what constitutes an "adequate" FBA. The IDEA only requires that the FBA be conducted as an individualized evaluation of the child to assist in determining whether the child is, or continues to be, a child with a disability following the federal regulations at C.F.R. 34 300.301 through C.F.R. 34 300.311. As with any individualized evaluation, the IDEA does provide the parents of a child with a disability the right to request an independent educational

evaluation of the child if the parent disagrees with an FBA obtained by the public agency under federal regulations at C.F.R. 34 300.502.

The parents have previously raised two allegations against USD #___ related to conducting an FBA for the student as follows:

> *The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly conduct the initial evaluation, the functional behavioral assessment, and the assistive technology assessment of the child during the 2015-16 school year by not following the appropriate evaluation procedures which requires that the child be assessed in all areas related to the suspected disability; that the evaluation be sufficiently comprehensive to identify all of the child's special education and related service needs; and that the evaluation use a variety of technically sound instruments administered by trained and knowledgeable personnel.*
>
> and
>
> *The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to properly conduct the functional behavioral assessment and the assistive technology assessment of the student during the 2016-17 school year as required by the child complaint decision dated September 2, 2016.*

These allegations were investigated and the findings and conclusions of the Report of Complaint dated September 2, 2016 and the Report of Complaint dated September 11, 2017 found USD #___ to be in compliance with the requirements of the federal regulations at C.F.R. 34 300.301 through C.F.R. 34 300.311 for these two allegations.

In this case, there are no requirements contained in the IDEA related to the content of an FBA, only that the FBA be conducted as an individualized evaluation of the student. Documentation found that USD #___ has conducted an FBA for the student as an individualized evaluation which met the requirements of the federal regulations at C.F.R. 34 300.301 through C.F.R. 34 300.311. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

ISSUE TWO: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP on February 3, 2017 specifically by refusing to allow the student to go to the specific staff for clarification and to calm down after being told he would not be allowed in Mr.A's classroom.

Findings:

The parents report that on February 3, 2017, K.B., School Psychologist at ____ High School, used verbal aggression to bully and intimidate the student to go to the special education resource room, not allowing him to calm down as required by the IEP. The parents believe that the student was attempting to follow the IEP by going to the identified people in the IEP to allow him to calm down but that he was not allowed to do so.

Federal regulations, at 34 C.F.R. 300.101, require school district's to make a free appropriate public education available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, define the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

The IEP dated December 13, 2016 includes the following accommodations for the student:

Accommodation	Rationale	Frequency	Location	Duration
Allow student to go to a preferred staff member that is available which may include taking a brief break when he becomes frustrated during class	to assist student in calming	whenever he becomes upset	preferred location: counselor, nurse, administrator	until he is calm
Smaller, quieter setting for class test and/or reteaching	due to distractions	whenever classroom test occurs in core classes	separate location in the classroom or the building	for the length of the test.

The February 3, 2017 email written by Ms. B. describes the situation as follows:

> *His story: He'd been sent to the resource room for no reason. He was punished already and served time after school yesterday. He didn't understand why he was being punished for no reason and deserved an explanation. He said he chose to leave math class earlier today, and wasn't sent out of class. He chose to leave class. And he didn't understand why teachers felt it was right to expect different things from him than from other kids. On and on . . .*
>
> *My response (which he did not like): JUST DO YOUR WORK!! Do what you are supposed to do and stop make excuses and demanding explanations of why you can't do whatever you want to do whenever you want to do it! JUST DO YOUR WORK!!*
>
> *I added that it didn't matter why he was being kicked out of class, asked to leave class, escorted to the office, spending time in ISS or at the north office conference table! What mattered was that if he was doing his work and getting the grades, he wouldn't be sent out of class. JUST DO YOUR WORK!!! If you make the grades and you do your work, teachers won't even look at you!*
>
> *I must have yelled that phrase a time . . . or 10 . . . in the hallway.*

In an interview, Ms. B. reported that she did visit with the student in the hallway as the student had been sent to the special education resource room by Mr. A to complete an assignment on February 3, 2017. Ms. B indicated she allowed the student to vent in order to for him to calm down and then repeatedly directed the student back to the task of finishing his school work. Ms. B noted and documentation shows that the student did ultimately complete the assignment in the special education resource room.

Ms. B reflected that her summary and choice of words to describe the interaction could easily be misinterpreted by the parents and was not an example of a professional correspondence. However, Ms. B noted that the student's IEP was implemented as written in the situation as the student had been sent to the special education resource room to complete work (re-teaching) and that she is one of the identified staff members to visit with the student and allow him the opportunity to calm down.

In this case, the IEP provides the accommodations of allowing the student to complete work (re-teaching) in the special education resource room which is where the student was being sent by Mr. A on February 3, 2017. An IEP accommodation also allows the student to visit with one of the identified staff members to calm down when he is frustrated. The student did visit with Ms. B, one of the identified staff members, and was allowed to vent in order to calm down. The student was then re-directed back to task and ultimately completed the assignment in the special education resource room. While the choice of words is not an example of professional correspondence, the IEP was implemented as written.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

> **ISSUE THREE:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the past 12 months, specifically by not providing 15 minutes per week of counseling services.

Findings:

The parents believe USD #___ has not consistently provided the counseling services required by the student's IEP. The parents report the student indicated these services were not provided weekly. In addition, the parents report notes from the counseling sessions were not kept and indicate that "no documentation shows no proof of sessions happening." The parents also argue the lack of notes doesn't allow the parents as IEP team members to monitor the progress of services as described in the IEP.

Federal regulations, at 34 C.F.R. 300.323, require each school district to have an IEP in effect for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part B at the beginning of the school year. Federal regulations, at 34 C.F.R. 300.101, require school district's to make a free appropriate public education available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, define the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

The IDEA does not require the IEP team to monitor the progress of services provided to a student. Federal regulations, at C.F.R. 300.320, only require that the child's progress toward the annual goals will be measured, and that periodic reports on the progress the child is making toward meeting the annual goals will be provided to parents as described in the IEP.

Documentation and interviews noted two IEPs in effect for the student during the past 12 months including an IEP dated December 14, 2015 and an IEP dated December 13, 2016. Both of these IEPs require the student to receive 15 minutes per week of counseling provided by the school psychologist.

Interviews found the procedure to document the provision of counseling services provided by the school psychologist is through the Provider Student Log contained in the computerized Synergy Information System. For the period included in the past 12 months, the following services were shown as being provided to the student by KB, the school psychologist assigned to ____ High School:

Date	Service	Minutes
(week of 11/7 – 11/11)		
11/9/16	Counseling &/Or Risk Factor Reduction (indiv)	15
(week of 11/28 – 12/2)		
11/29/16	Counseling &/Or Risk Factor Reduction (indiv)	25
(week of 12/12-12/16)		
12/12/16	Counseling &/Or Risk Factor Reduction (indiv)	20
(week of 1/9 – 1/13)		
1/10/17	Counseling &/Or Risk Factor Reduction (indiv)	15
1/12/17	Counseling &/Or Risk Factor Reduction (indiv)	20
(week of 1/30 – 2/3)		
2/1/17	Counseling &/Or Risk Factor Reduction (indiv)	10
2/2/17	Counseling &/Or Risk Factor Reduction (indiv)	20
2/3/17	Counseling &/Or Risk Factor Reduction (indiv)	10

Documentation and interviews noted that the student had frequent absences and no set weekly appointment to provide the counseling services was set during the 2016-17 school year. It is noted the student only attended ____ High School in USD #___ for 16 weeks based on the 2016-17 school calendar and that the student has not attended school in USD #___ since February 9, 2017.

In this case, documentation and interviews found the student was provided the required 15 minutes per week of counseling on only five out of the 16 weeks of attendance during the past 12 months. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is substantiated.

ISSUE FOUR: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriate prior written notice for change of services and change of placement when the student was removed from co-taught classes of Algebra, World History, and Math Lab and placed in the special education resource room following the November 28, 2016 IEP team meeting.

Findings:

The parents believe USD #___ changed the student's placement at the end of the first semester in ninth grade in December 2016 without following appropriate procedures to provide prior written and obtain consent. The parents report they were invited to an informal meeting on November 28, 2016 to discuss a plan for improving grades during the remaining three weeks leading up to winter break and the end of the first semester. The parents indicated that the student was removed from co-taught 2nd hour Algebra, 5th hour World History, and 7th hour Algebra 1-Tier 2 Math Lab and placed in the special education classroom in an attempt to enable the student to pass the math classes at the semester grading period.

Federal regulations, at 34 C.F.R. 300.320 and 34 C.F.R. 300.323, require that the IEP be developed, reviewed, and revised in a meeting or through the IEP amendment process.

Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents a reasonable time before the responsible public agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. Kansas regulation, at K.A.R. 91-40-27(a)(3), requires parent consent before making a material change in services and/or a substantial change in placement. K.S.A. 72-988 describes a material change in services as an increase or decrease of 25% or more of any one service and describes a substantial change of placement as movement to a less or a more restrictive environment for 25% or more of student's day.

The USD #___ staff reported an informal meeting was held with the parents on November 28, 2016 to develop a plan to address failing grades for the remainder of the semester. The staff acknowledged that a "trial placement" in the special education resource classroom was recommended and implemented as a result of this informal meeting. The student was removed from "class within a class" co-taught general education settings and placed in the "resource room" special education setting to receive his specialized instruction. Staff reported the annual IEP meeting was scheduled for December 13, 2016 and the "trial placement" would be reevaluated at that time.

The USD #___ staff acknowledged that the changes in the student's IEP were not made by the IEP team at an IEP team meeting or through the IEP amendment process. The USD #___ staff also acknowledged that the parents were not provided appropriate prior written notice and did not obtain written consent for the material change in services as required by state and federal law.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is substantiated.

The USD #___ staff reported and documentation shows USD #___ has proactively provided guidance regarding the procedures to be followed when a "trial placement" is being considered for a student with an IEP to all special education staff within the agency via the ____ Public Schools Student Support Services Newsletter dated November 2017.

ISSUE FIVE: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent with appropriate prior written notice for change in special education services and placement when the student was withdrawn from the school district during the 2017-18 school year.

Findings:

The parents believe USD #___ should have provided prior written notice before exiting the student from the attendance system at the school because the exiting resulted in the withdrawal of the student from special education without obtaining the parent's written consent. In addition, the parents report that on August 24, 2017, Ms. G threatened truancy and withdrawal but did not respond to their request for more information. Ms. G threatened truancy again on October 3, 2017.

The parents also report receiving an official notice from ____ Public School's Food Nutrition Services which excluded the student from state and federally funded meal benefits on September 21, 2017 because the student was not shown as enrolled in the USD #___ electronic system. The parents indicated the student's removal from the electronic system caused a delay in the approval of the free and reduced lunch applications for the other children in the family.

Federal regulations, at 34 CFR 300.9 and C.F.R. 300.300, allow parents to revoke consent for special education and related services and for the public agency to provide the parent with appropriate prior written notice in order to change the identification and/or placement of the student resulting in the child no longer being eligible for special education and related services under the IDEA.

Under K.S.A. 72-977, the parents of a student between the ages of three and 21 determined to be an exceptional child must require such child to attend school to receive the special education and related services indicated in the child's IEP or must provide such services privately. Any child inexcusably absent for a substantial part of a school day on either three consecutive school days or five school days in any semester or seven school days in any school year, whichever of the foregoing occurs first, shall be considered to be inexcusably absent. Any child who is inexcusably absent or not enrolled in a district school or is not otherwise receiving special education and related services on a private basis as indicated in the child's IEP shall be considered to be not attending school. Each

school district is required to report all cases of pupils not attending school to the Kansas Department for Children and Families (DCF) or to the appropriate district attorney's office, depending on the age of the student, and to the Kansas Commissioner of Education or their designee.

Documentation and interviews found the student did not attend school in USD #___ beginning on August 23, 2017, the first day of the 2017-18 school year. Ms. G reported USD #___ enrollment procedures allow for students who were enrolled the previous school year to "roll over" their enrollment into the subsequent school year upon attending a school within the USD ___ district boundaries. Parents may also choose to enroll a student by completing the online enrollment process. Ms. G reported that neither process of enrollment was completed by the student's parent for the 2017-18 school year. Documentation shows Ms. G shared this information with the parents in an email dated August 24, 2017.

USD #___ was required to report enrollment for the 2017-18 school year to the Kansas State Department of Education on September 20, 2017 and the student was reported as not enrolled on that date.

Because of K.S.A. 72-1113(c)'s requirement for reporting truancy of students with exceptionalities, Ms. G reported and documentation shows the student was entered into the attendance program of the USD #___'s computerized Synergy Information System for the purpose of recording nonattendance.

Ms. G indicated and documentation shows that she again shared information with the parents regarding the district's policies, procedures, and practices in regard to nonattendance and the enrollment process for the 2017-18 school year in an email dated October 3, 2017 as noted below:

> *Please note that USD___ did not make a unilateral decision to remove the student from our system. The removal from our electronic system occurred subsequent to your decision as parents to not have the student return to a public school campus nor enroll him in private or homeschool at the start of the new school year. As such, he was temporarily removed from out electronic system, though at no time was the student removed from special education. As of September 29, 2017, the student is active in our electronic system. Please be aware that he will be reported as truant everyday he does not attend.*

In response to your request for a truancy disclaimer for the student, please be advised that K.S.A. 72-1111(b) requires exemption from the compulsory attendance requirements for students age 16 and 17, if the parent and the student attend a counseling session and receive the truancy waiver. However, paragraph (d) of the statute states it does not apply to children with disabilities. For children with disabilities, K.S.A. 72-977 is the compulsory attendance statute. That statute has no similar disclaimer process and is as follows: Compulsory attendance of exceptional children at school for receipt of services . . . (a) except as otherwise provided in this section, it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately . . . subsequently USD___ is required to comply with the truancy laws until such time as the student is either attending a public school or enrolled in a private or homeschool or is no longer identified as a child with a disability. If you choose to return the student to public school, ____ stands ready, willing and able to provide the special education services.

Documentation shows a District Attorney's Truancy Referral Form for the student was sent to Chris Champagne, Truancy Officer for USD #___. The referral form indicated the student had been absent from school for 32 days as of October 9, 2017. The form also indicated the student was identified as a student receiving special education and noted that on October 4, 2017, the parents were informed in writing that if the student continues to be absent from school without a valid excuse, the school shall report the student to the District Attorney's Office.

In this case, USD #___ did not change the identification or placement of the student or withdraw the student from special education. The parents of the student have chosen not to enroll the student in USD #___ following the district procedures and practices. USD #___ continues to include the student in the computerized Synergy Information System for the purpose of recording nonattendance so the district can comply with K.S.A. 72-1113(c)'s requirement for reporting truancy of students with exceptionalities. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

ISSUE SIX: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE to the student during the 2017-18 school year.

Findings:

The parents indicate USD #___ has been aware of the student's "work avoidance" behavior for the past two years and has documented in the IEP that the student's behavior impedes his learning; however, USD #___ has refused to develop a BIP to help the student succeed in school. The parents believe this is gross negligence and a refusal to provide FAPE due to an inadequate IEP for the student.

Federal regulations, at 34 C.F.R. 300.324, require the IEP team consider the use of positive behavior interventions and supports in the case of a child whose behavior impedes his or her learning or that of others. The IEP team may determine to address the behaviors through an IEP goal / services and/or through a BIP. For a child whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that at BIP is appropriate, the BIP is included in the IEP for the student.

Federal regulations, at 34 C.F.R. 300.530, require an FBA and BIP when the LEA, the parent, and the relevant members of the child's IEP team have determined that a student's conduct resulting in a long-term disciplinary change of placement was a manifestation of his or her disability. If a child's misconduct has been found to have a direct and substantial relationship to his or her disability, the IEP team must conduct an FBA of the child, unless one has already been conducted. The IEP team must also write a BIP for this child, unless one already exists.

Federal regulations, at 34 C.F.R. 300.323, require each school district to have an IEP in effect for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part B at the beginning of the school year. Federal regulations, at 34 C.F.R. 300.101, require school district's to make a free appropriate public education available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, define the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

Interviews found the student has not been the subject of any disciplinary change of placement due to misconduct during the past 12 months.

Documentation shows the December 13, 2016 IEP includes a Present Level of Academic Achievement and Functional Performance (PLAAFP) that describes the student's behavior as follows:

> *Student is currently failing all of his academic classes, mostly because of lack of work completion. During class periods, he normally gets only a small portion of his assignments completed because he loses focus or makes the decision that he does not want to complete the work. He avoids academic tasks by asking for breaks (which have often been very long), talking with friends, using his phone (Facebook, texts, music, games), putting his head down to sleep, or asking to go to the nurse due to a headache or stomachache. Student has significant deficits in auditory processing, and is a low average on visual processing, which makes it difficult for him to process information presented to him in class quickly and adequately. Teachers have been asked to present step-by-step directions on a laminated task sheet to help him understand the work and step order. Some days are more successful with this task sheet than others, as he continues to avoid doing work and ignores the task sheet. When teachers and paras offer assistance, he refuses, saying, "I've got this - I don't need help" or "Please stop bothering me." In advocacy, he has had some success when placed in a separate environment with no distractions, but that requires monitoring to make sure he does not have his phone out or is randomly choosing answers. Student also has difficulty focusing in noisy environments due to his attention deficit, which also impacts his work completion.*

Under Behavior Needs in the Special Considerations section of the IEP, it is noted that the student's behavior does impede his learning. The impeding behavior is described as *Work Avoidance: Any behavior that involves not completing classwork, not staying in class, not participating in class. Examples include sleeping in class, long breaks, listening to music during lectures, requests to leave class to see other staff, attempts to engage staff in discussions, talking to peers, wandering within the class.* It is noted that an FBA has been conducted but a BIP is not warranted as interventions are on-going to address this behavior and that current interventions are working.

The IEP includes three goals to address work avoidance and work completion. The IEP includes 150 minutes per day of specialized instruction in the special

education setting and 60 minutes per day of specialized instruction in the general education setting to address these goals. The IEP indicates the student will take his English, Algebra & Algebra Lab in adapted format (50 minutes each), and his science and history in class within a class (CWC) format (30 minutes each).

USD #___ staff report the student has not attended school during the 2017-18 school year but that the current IEP is in place and will be implanted as written if the student does begin to attend school again based upon the student's tentative class schedule for tenth grade. It is noted the parent made a previous allegation that USD #___ did not have an appropriate schedule in place for the 2017-18 school year that would provide the special education services required by the December 13, 2016 IEP and the Final Report of Investigation dated September 11, 2017 did not substantiate any noncompliance for the allegation.

In this case, documentation and interviews found that USD #___ has considered the use of positive behavior interventions and supports for the student in the most current IEP dated December 13, 2016. That IEP includes a description of the problem behaviors as well as three annual goals to address the task avoidance and work completion concerns. That IEP includes special education services to support the student in achieving the annual goals. The IEP team states that a behavior intervention plan is not required at this time as interventions are on-going. Interviews found the student has not yet attended school in USD #___ during the 2017-18 school year but that a current IEP is in place when/if the student returns to school. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

> **ISSUE SEVEN:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to obtain consent prior to conducting the functional behavioral assessment (FBA)of the student during the 2016-17 school year as required by the child complaint decision dated September 2, 2016.

Findings:

It is noted that two previous child complaint investigations were conducted with regards to the FBA and ATA of the student initially proposed on December 14, 2015.

The Report of Complaint dated September 2, 2016 found that USD #___ had proper justification to extend the 60 school day evaluation timeline for the FBA and ATA after parent consent was obtained on December 14, 2015 due to the student not being available to conduct the assessments for 33 days of the 60 school day evaluation timeline. Because the student was currently enrolled and attending ninth grade in USD #___, the FBA and ATA for the student was ordered to be completed within 60 school days of the first day of the 2016-17 school year, unless an exception to the 60 school day timeline specified in K.A.R. 91-40-8(f) or (g).

The Report of Complaint dated September 11, 2017 found USD #___ had competed the FBA and ATA following the appropriate procedures and within the timeline due to an acceptable extension as required by the corrective action contained in the Report of Complaint dated September 2, 2016.

The parent's allegation is that USD #___ was required to provide prior written notice and obtain consent in order to conduct the FBA and ATA ordered in the Report of Complaint dated September 2, 2017. The parents assert that the FBA and ATA conducted during the 2016-17 school year were new evaluations and separate from the initial evaluation proposed by the district on December 14, 2015, but not completed during the 2015-16 school year due to acceptable extensions. The parents report the district was aware of the need to obtain consent prior to completing the FBA and ATA as documented by the April 11, 2016 letter from Ms. G stating "the ____ Public Schools stands ready, willing, and able to complete a Functional Behavior Assessment and Assistive Technology Evaluation for the student at such time as he is able to consistently attend school to allow for the collection and analysis of valid data. Upon the student's return to the ____ Public Schools, parental consent will be pursued as the 60 schools days allowed to complete all assessments expired on April 1, 2016."

Federal regulations, at C.F.R. 34 300.503 and C.F.R. 34 300.300 require public agencies to provide parents with appropriate prior written notice and obtain written consent prior to conducting any individualized evaluation of a child.

In this case, USD #___ did provide appropriate prior written notice and obtain written consent for the FBA and ATA from the parents on December 14, 2015. These evaluations were not able to be completed within the 60 day timeframe due to acceptable extensions. The Report of Complaint dated September 2, 2016 required USD #___ to complete the FBA and ATA for the student within 60 school days of the first day of the 2016-17 school year, unless an exception to

the 60 school day timeline specified in K.A.R. 91-40-8(f) or (g). Prior written notice for the FBA and ATA had already been provided to the parent and written consent had already been obtained from the parent to conduct the FBA and ATA on December 14, 2015; as such, there was no IDEA requirement to provide an additional prior written notice and obtain additional consent to complete the FBA and ATA that had already been started and only needed to be completed.

It is noted that a state special education complaint, such as this one, must allege that a school district has violated either a state or a federal special education law or regulation [see K.A.R. 91-40-51(a)]. School districts, of course, can chose to impose additional requirements above what is required by state or federal special education laws or regulations. The statement made by Ms. G indicating that "Upon the student's return to the ____ Public Schools, parental consent will be pursued as the 60 schools days allowed to complete all assessments expired on April 1, 2016." appears to be a district requirement, and would be considered to be a requirement that exceeds those contained in state or federal special education laws or regulations, at C.F.R. 34 300.503, C.F.R. 34 300.300, or K.A.R. 91-40-27(a)(1)..

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

> **ISSUE EIGHT:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to obtain consent prior to conducting the assistive technology assessment (ATA) of the student during the 2016-17 school year as required by the child complaint decision dated September 2, 2016.

Findings:

Again, the parents believe USD #___ was required to provide a second prior written notice and to obtain a second written consent to conduct the ATA ordered to be completed at the beginning of the 2016-17 school year.

The findings of Issue Seven are incorporated herein by reference.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in the following areas:

- 34 C.F.R. 300.323 requires each school district to have an IEP in effect for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part B at the beginning of the school year. 34 C.F.R. 300.101 requires school district's to make a free appropriate public education available to all children residing within the district. 34 C.F.R. 300.17 defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

  The documentation and interviews found that in this case, the student's IEP in effect for the past 12 months did require the student to receive counseling with the school psychologist for 15 minutes per week. Documentation and interviews also found the counseling services were only provided to the student during five of the 16 weeks the student was in attendance in USD #___.

- Federal regulations, at 34 C.F.R. 300.320 and 34 C.F.R. 300.323, require that the IEP be developed, reviewed, and revised in a meeting or through the IEP amendment process. The documentation and interviews found that in this case, changes in the student's schedule in December 2016 were made which changed the special educational placement of the student. These changes were made at an informal meeting with the parent and not at an IEP team meeting or through the IEP amendment process.

- Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents a reasonable time before the responsible public agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency

proposes or refuses to take the action. Kansas regulation, at K.A.R. 91-40-27(a)(3), requires parent consent before making a material change in services and/or a substantial change in placement. K.S.A. 72-988 describes a material change in services as an increase or decrease of 25% or more of any one service and describes a substantial change of placement as movement to a less or a more restrictive environment for 25% or more of student's day.

In this case, documentation and interviews found that the student was removed from "class within a class" co-taught general education settings and placed in the "resource room" special education setting to receive his specialized instruction as a "trial placement" in December 2016. The parents were not provided with appropriate prior written notice of this material change in services as required.

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
   a) Comply with 34 C.F.R. 300.320, 34 C.F.R. 300.101, and 34 C.F.R. 300.17 by ensuring that the IEPs of all students eligible for services under the IDEA will be in place at the beginning of each school year and implemented as written.
   b) Comply with 34 C.F.R. 300.320 and 34 C.F.R. 300.323, by ensuring that all IEPs will be developed, reviewed, and revised in a meeting or through the IEP amendment process.
   c) Comply with 34 C.F.R. 300.503 as well as K.A.R. 91-40-27(a)(3) and K.S.A. 72-988 by ensuring appropriate prior written notice is provided to parents and written consent is obtained as required.

2. In addition, no later than January 30, 2018, USD #___ will provide written guidance to all staff regarding reviewing and revising the IEP as well as the IEP amendment process. It is noted the district has already provided written guidance regarding when to provide prior written notice to parents in regards to trial placements of students.

3. No later than January 30, 2018, the IEP team for the student will meet to determine a plan to provide a minimum of 165 minutes of compensatory

counseling services for the student. The parent shall have the option of accepting all, part of, or none of the services proposed in the plan for compensatory services. A copy of this plan will be provided to Early Childhood, Special Education and Title Services, along with a statement of the portion of the plan, if any, accepted by the parent.

4. Further, USD # ___ shall, within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools: 18FC___02

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on October 18, 2017, by ____ and ____ _____ on behalf of their son, _____ _____. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, an Initial Report, addressing the allegations, was issued on November 18, 2017. That report concluded that there were violations of special education laws and regulations

Thereafter, on December 1, 2017, the parent filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the report, the parent's notice of appeal, the district's written response, and information contained in the complaint file at the Kansas State Department of Education (KSDE). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

PRELIMINARY MATTERS

First, the Committee will limit its inquiry to the issues presented in the appeal. No new issues will be decided by the Appeal Committee. The appeal process is a review of the complaint report. The Appeal Committee does not conduct a separate investigation. The Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the complaint report.

Second, the Committee believes the complaint report was unnecessarily complicated because: (a) the investigator changed the wording in the parents' original allegations; and (b) in her report, the investigator did not address the parent's issues in the order presented by the parents. These actions resulted in an appeal in which the parents asserted that they did not recognize some of the issues which were being addressed in the report. The Appeal Committee also had difficulty matching allegations in the original complaint to the issues addressed in the complaint report.

The Appeal Committee recognizes that an investigator has a duty to clarify what the actual issues are and to reframe those issues in the report, if that is necessary to accurately address the concerns of the parents. However, when, as was the case in this complaint, the parents disagree with an investigator's revised statement of the issues in the complaint, the Committee believes the investigator should present the issues in the report in the exact words used by the parent. It is, after all, the parent's complaint.

Third, the Committee notes the parents' request on page 24 of the appeal, where the parents state that they request "status reports" with dates for the student that were provided to the state department of education from USD ___ for the 2015-2016, 2016-2017, and 2017-2018 school years. The Committee was unable to discern what specific information the parents are requesting, and recommends that the parents identify the specific information they are seeking and make their request to Scott Gordon, General Counsel, Kansas State Department of Education, Landon State Office Building, 900 SW Jackson Street, Topeka, Kansas 66612.

DISCUSSION OF ISSUES ON APPEAL

The Committee will address the issues on appeal in the order presented in the parent's notice of appeal.

APPEAL ISSUE 1:

In their appeal, the parents state that they do not recognize this issue as an allegation that they made in their original complaint.

The Committee reviewed the original complaint and the complaint report and concluded that Issue 1 in the report addressed Issue 4 in the original complaint. In their appeal, the parents did not contest the findings or conclusions in Issue 4 of the report. Accordingly, the Committee sustains the findings and conclusions in Issue 4 of the report.

The Committee notes the following statement by the parents in their appeal: "It is not ok or legal to change allegations. Ms. Thomas is an investigator, not the complainant." As indicated above, the Committee, in general, agrees with this statement. While not illegal, it is at least inadvisable for an investigator to rephrase an allegation when a complainant expresses a disagreement with the resulting rephrased allegation. On this issue, however, the Committee has determined that Issue 1 in the report adequately addressed Issue 4 in the original complaint.

APPEAL ISSUE 2:

Appeal Issue 2 relates to Issue 5 in the original complaint and to Issue 2 in the complaint report. On page 6 of the report, the investigator cites the student's IEP, dated December 13, 2016, as including the following accommodation: "Allow student to go to a preferred staff member that is available which may include taking a brief break when he becomes frustrated during class." The investigator concluded that this accommodation had been provided because the student did go to a preferred staff member, was permitted to vent, and eventually completed his assignment in the resource room.

The Committee disagrees with this conclusion. A close review of the IEP shows that the rationale for this accommodation is not merely to allow the student to go to a preferred staff member. The stated rationale for this accommodation is: "to assist student in calming." The evidence presented in the report is that the teacher to whom the student

went did not use techniques "to assist" the student in calming. Instead, the teacher's response, which the teacher stated in a February 3, 2017 e-mail, was described in the report as:

> My response (which he did not like): JUST DO YOURWORK!! Do what you are supposed to do and stop make (sic) excuses and demanding explanations of why you can't do whatever you want to do whenever you want to do it!! JUST DO YOUR WORK!!
>
> I added that it didn't matter why he was being kicked out of class, asked to leave class, escorted to the office, spending time in ISS or at the north office conference table! What mattered was that if he was doing his work and getting the grades, he wouldn't be sent out of class. JUST DO YOUR WORK!!! If you make the grades and you do your work, teachers won't even look at you!
>
> I must have yelled that phrase a time…or 10…in the hallway.

With this documented evidence, the Committee finds that that the IEP accommodation to allow the student to go to a preferred staff member for assistance in calming was not provided on this specific occasion. Accordingly, the Committee reverses the complaint report on this issue, and concludes that there was a violation of the special education requirement to provide services in conformity with the IEP (34 C.F.R. 300.17).

APPEAL ISSUE 3:

Appeal Issue 3 relates to issue 5 in the complaint report (and issue 9 in the original complaint). In this issue, the parents assert that when the district put the student on inactive status on the district's electronic student information system, it effectively withdrew the student from special education, and did so without prior written notice and without parent consent. The conclusion in the complaint report was that, although this student has not attended school in the district since February 9, 2017, the student was not withdrawn from special education. The Committee agrees with the findings and conclusion in the complaint report. Putting the student on inactive status in a student information system is not withdrawal from eligibility for special education services and is not an action that requires a prior written notice or parent consent. The evidence presented documents that at all times the student remained eligible for special education services and that the district had communicated that to the parent, including that the district stood ready, willing, and able to provide the services in the student's IEP should he return to school. The report is sustained on this issue.

APPEAL ISSUE 4:

Appeal Issue 4 appears to relate to Issue 3 in the original complaint and to Issue 6 in the complaint report. Issue 3 in the original complaint is: "School staff made a pre-determination to refuse assistive technology services and refuse behavior intervention

plan to the IEP." Issue 6 in the complaint report is stated as a failure to provide a free appropriate public education (FAPE). The complaint report concludes that the IEP team considered the needs of the student and properly determined that a behavior intervention plan was not necessary. However, the complaint report does not address the parent's allegation that the refusal to provide assistive technology services and a behavior intervention plan was pre-determined before the team made its final decision.

In support of their allegation that the refusal for these proposed IEP provisions was pre-determined, the parents stated in their original complaint that a Multi-disciplinary Team Report included a child study team (which apparently consisted of at least some members of the student's IEP team) recommendation stating that the student did not qualify for assistive technology or for a behavior intervention plan. The Committee notes that IEP teams often receive recommendations from outside sources. When this happens, the IEP team is required by law to consider the recommendations it receives. Accordingly, when considering outside recommendations, the team is complying with law, not violating law. The Committee sees no factual basis in the parents' original complaint to substantiate that the decision to deny assistive technology services and/or a behavior intervention plan was pre-determined before the IEP meeting. However, because the investigator did not address the parents' allegation that the decision to deny these services was pre-determined, the Committee has concluded that the relief requested by the parents in their appeal should be granted. Therefore, Issue 6 in the complaint report is removed, and the findings and conclusion in that issue are nullified. The parents may file another complaint on the issue of whether the denial of these services was pre-determined by submitting another complaint and include the facts which they believe support the allegation.

APPEAL ISSUE 5:

Appeal Issue 5 relates to Issue 7 in the complaint report, and Issue 1 in the original complaint. In Issue 1 of the original complaint, the parents' allege that the district failed to provide a prior written notice and obtain parent consent to conduct a functional behavioral assessment and an assistive technology assessment, as required by the Kansas State Department of Education as a corrective action in a complaint report dated 9/2/16. On page 18 of the current complaint report, the investigator notes that the corrective action in the 9/2/16 report required the district to complete the assessments, and that the corrective action did not require notice or consent because notice and consent for these assessments had already been provided. Moreover, in complaint No. 18FC___-001, another complaint report was issued on 9/11/17. On page 6 of this report, the investigator made a specific conclusion, stating: "Documentation and interview found the FBA and ATA were completed following the appropriate procedures and within the timeline due to an acceptable extension. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated." The Committee agrees with these conclusions. The Committee also notes that it no longer has jurisdiction to consider this issue on appeal because the time to appeal these conclusions made in previous complaint reports has expired.

CONCLUSION

The investigator's findings and conclusions are modified as follows:

Issue 2 in the complaint report is reversed. The Committee has concluded that the accommodation to assist the student in calming, specified in the IEP, was not provided, and, therefore, a violation of special education requirements has been substantiated. Additional corrective action is needed to address this violation. The district is ordered to schedule an IEP team meeting for the purpose of adding specific interventions to the IEP that will be used by preferred staff members to assist this student to become calm when he comes to them for this kind of assistance. Although the district is not ordinarily required by law to obtain parent consent for this kind of change to an IEP, the Committee is requiring parent consent for this change. Therefore, the district is directed to schedule an IEP team meeting to propose specific interventions which must be used by preferred staff members to assist this student when he comes to them to become calm. The proposal of the team shall be specified on a prior written notice and the district shall request consent from the parents. The parents have the option to consent to all of the proposed interventions, a portion of the proposed interventions, or to none of them. The district must schedule this meeting within five school days of receipt of this decision, to be held on a date that is mutually agreeable to both parties. Within three business days of the meeting, the district shall submit to Early Childhood, Special Education and Title Services a statement verifying that the meeting was conducted, the outcome of the meeting, and provide any supporting documents, such as the prior written notice and consent documents.

Issue 4 in the report is removed and nullified. The parents may file another complaint presenting the issue of whether school staff pre-determined the refusal to put assistive technology services and a behavior intervention plan in the IEP, and providing the factual basis for that allegation.

All other findings and conclusions in the original report are sustained. All corrective actions in the original report remain, as stated, and no extension of time is granted as a result of this appeal.

This is the final decision on this matter, there is no further appeal. This Final Report is issued this 18th day of December, 2017.

APPEAL COMMITTEE:

Colleen Riley Laura Jurgensen

Stacie Martin

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON NOVEMBER 14, 2017

DATE OF REPORT: DECEMBER 14, 2017

This report is in response to a complaint filed with our office by _____ on behalf of her son, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the mother." Please note that while not a party to this complaint, _____, the student's father, did participate in the investigation. _____ will be referred to as "the father" throughout the remainder of this report.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ and the ____ Special Education Cooperative with by telephone on November 5, 2017. USD #___ made the following staff persons available to be interviewed:

- H, Director of Special Education at the ____ Special Education Cooperative
- P., Assistant Director of Special Education at the ____ Special Education Cooperative
- T., Superintendent at USD #___
- R., Principal of _____ Academic Center in USD #___
- A., School Psychologist at ____ Special Education Cooperative
- V., Gifted Instructor for USD #___
- J., Professional Development Team Behavior Coach for USD #___

In addition, the Complaint Investigator spoke to the father by telephone on December 11, 2017, at the request of USD #___ and the ____ Special Education Cooperative.

The Complaint Investigator spoke to the complainant by telephone on November 5, November 8, and November 11, 2017.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Emails between mother and USD #___ staff dated January 25, January 26, January 27, January 28, and January 29, 2016
- Psychological Evaluation dated July 22, 2016 from the Family Service and Guidance Center of Topeka, Inc.
- Notes from Office Visit with Linda Heitzman-Powell, PhD dated September 2, 2016 from the University of Kansas Center for Child Health and Development
- Consent for Completion of Kaufman Brief Intelligence Test (KBIT) signed by mother on February 2, 2017
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent (PWN) dated February 9, 2017 and signed by parent on February 9, 2017
- Notes from Office Visit with Jessica Schuttler, PhD, Licensed Psychologist, dated March 2, 2017 from the University of Kansas Center for Child Health and Development
- Interdisciplinary Diagnostic Evaluation dated March 2, 2017 from the University of Kansas Center for Child Health and Development
- PWN amended on March 29, 2017 to add social/emotional/behavioral area to the current evaluation process and signed by parent on March 29, 2017
- Notice of Meeting (NOM) dated April 20, 2017 to schedule a meeting to review evaluation results and determine eligibility on May 3, 2017
- Evaluation/Eligibility Report dated May 3, 2017
- Individualized Education Program (IEP) dated May 3, 2017
- Emails between mother and A., School Psychologist, dated May 16 and May 18, 2017
- Emails from Staci Honas, 5th grade Classroom Teacher, to R., Principal, dated August 22, 2017
- Observation Notes dated September 15, 2017 from the ____ Special Education Cooperative Professional Development Team Behavior Supports and Resources
- Emails between mother and H, Special Education Director, dated September 18, 2017
- Discipline Log Entries for the student in third through fifth grades
- Emails between mother and H dated September 24 and September 25, 2017
- Emails between H and Lori Chambers, Kansas Technical Assistance Network (TASN), dated September 25 and September 26, 2017
- PWN dated September 27, 2017
- Email from P., Assistant Special Education Director, and R., Principal, dated November 2, 2017

- Email from the father to USD #___ staff dated November 3, 2017
- Revocation of Consent for All Special Education and Related Services dated November 6, 2017 and signed by the father on November 10, 2017
- _____ Academic Center Discipline Policy – Point System
- Copy of student's Discipline Points for the 2017-18 school year
- USD #___ Response to the Allegation Summary
- ____ Special Education Cooperative Response to the Allegation Summary

Background Information

This investigation involves a ten year-old student who was enrolled at _____ Academic Center in USD #___ as a fifth grade student during the 2017-18 school year. The student lives with both parents on an alternating schedule. All parties agree that both parents have equal educational decision making rights at this time.

Documentation shows the student has medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Opposition Defiant Disorder (ODD). The student participates in counseling and medication management to address these diagnoses.

Records indicate the student was most recently found eligible for special education and related services as a student with the exceptionality in the category of Gifted. While an IEP was developed and implemented at the end of the 2016-17 and beginning of the 2017-18 school years, the father withdrew consent for all special education services at the beginning of November 2017 and the student no longer receives gifted services, supports, or instruction.

Issues

The complainant raised one issue which was investigated.

ISSUE ONE: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to locate, evaluate and identify students with disabilities in need of special education and related services, specifically by failing to suspect the student of having a disability based on medical diagnoses and school records and failing to follow appropriate child find procedures during the past 12 months.

Findings:

Kansas state law, under K.A.R. 91-40-7, requires each school board to adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction in compliance with federal regulations, at 34 C.F.R. 300.304, 34 C.F.R 300.305, and 34 C.F.R. 300.306. Kansas regulations include a General Education Intervention (GEI) component to allow for targeted intervention strategies to be implemented in the regular education setting prior to a referral for special education unless and until the public agency suspects the student may be a child with a disability in need of special education and related services.

Federal regulations, at 34 C.F.R. 300.301 provides for parents to request an initial evaluation for their child if they suspect a disability. If the public agency receives such a request, the district shall either accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or refuse the request and provide the parent with written notice refusing the request.

Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents when the responsible public agency refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action refused by the agency and an explanation of why the agency refuses to take the action.

Federal regulations, at 34 C.F.R. 300.9 and 34 C.F.R. 300.300, requires that a parent may unilaterally withdraw a student from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to his/her child. Upon receipt of the parent's written request for revocation of consent, a public agency must provide the parent with prior written notice before ceasing the provision of special education and related services.

Federal regulations, at 34 C.F.R. 300.502, require that the parents of a student with a disability have a right to obtain an Independent Educational Evaluation (IEE) of their child at public expense for any agency evaluation with which the parents disagree. That right is subject to the requirement that the independent evaluation must meet the educational evaluation criteria used by the responsible public agency when it initiates an evaluation, to the extent those criteria are

consistent with the parent's right to an independent evaluation. "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

The IDEA allows child complaint investigations to cover a 12 month period from the date of the allegations. In this case, the time period covered runs from November 14, 2016 through the present. This time period covers fourth grade during the 2016-17 school year and first semester of fifth grade during the 2017-18 school year.

The mother reported the student first began having difficulties with behavior at school during the second grade and that she sought an outside evaluation. At that time, the outside evaluator diagnosed the student with ADHD and ODD. The mother reported the student began taking medication and participated in private counseling upon the recommendations of this evaluation.

The mother reports there were many incidents of behavioral problems during third grade. Discipline Behavior Logs showed seven behavioral incidents during third grade on January 14, January 27, January 28, February 6, April 25, May 6, and May 11, 2016. These incidents all involved some type of refusal to follow directions followed by escalation of behavior culminating in some type of physical aggression towards a peer or property. USD #___ reported that the Student Intervention Team (SIT) and the parents collaborated during third grade to address the student's behaviors.

During fourth grade, there were two incidents during the first semester. On October 13, 2016, the student refused to follow directions which escalated into throwing his pencil and hitting the classroom teacher. On November 17, 2016, the student again refused to follow directions which then escalated into hitting a peer and kicking and exercise ball in the classroom. The peers were removed from the classroom and the student was escorted to the office for the remainder of the school day.

Interviews found that the student continued to earn above average grades despite these incidents. Documentation and interviews found the mother gave consent for a gifted screening of the student using the KBIT on February 2, 2017. Results of the KBIT showed the student scored at the 98th percentile as compared to his peers in regards to cognitive skills.

The mother was provided with a PWN proposing an initial evaluation with additional assessment in the areas of cognitive and academic achievement on February 9, 2017. The parent gave written consent for this evaluation on the same date. On March 29, 2017, the PWN was amended to add additional assessment in the area of social/emotional/behavioral.

A third discipline incident happened on March 31, 2017 when the student and a peer got into a pushing match over who would go in the door first.

Documentation shows a multidisciplinary team (MDT) meeting was held on May 3, 2017 with the mother in attendance. The evaluation report includes a description of the additional assessments administered including the Wechsler Intelligence Scale for Children (WISC-V) and the Kaufman Test of Educational Achievement (KTEA) which showed overall cognitive ability at the 97th percentile and reading comprehension / math application at the 96th percentile. The results of the Behavior Assessment for Children (BASC-III) were described as:

> *Rating scales were completed by the classroom teacher and both of the student's parents. All of the areas fell within the average range.*

General Education Interventions (GEI) were described as two extension activities provided in the fourth grade classroom. The report documents the fourth grade classroom teacher as stating:

> *The curriculum extension activities were a motivator for him and improved his classroom behavior. . . He has been given some responsibility and opportunity to share his knowledge with classmates by helping them. He seems to enjoy this.*

It is noted that the Evaluation Report also documents the medical diagnoses of ADHD and ODD as well as references past discipline referrals as follows:

> *There are several behavior/discipline reports logged in PowerSchool. The frequency of these has dropped this school year. Most of the entries involve outbursts by the student following incidents where he perceives that he or others were treated unfairly.*

At the conclusion of the MDT meeting, it was determined that the student did meet the eligibility criteria to be identified under the exceptionality category of Gifted.

The mother reported she believes the fourth grade teacher "handled his behavior better" than the third grade teacher and that the overall number of incidents of behavior did decrease during the fourth grade year.

Documentation and interviews found an IEP was also developed on May 3, 2017 requiring 60 minutes per week of gifted instruction for three weeks per month and 300 minutes of gifted instruction for one day every fourth week. A PWN for eligibility and services was provided in person on May 3, 2017 and written consent was provided by both parents on that same date. Interviews confirmed that services were provided to the student following the IEP team meeting as required.

The final two discipline incidents of fourth grade happened on May 16 and May 18, 2017. The first incident started when the student told the classroom teacher that his peers were "talking about him" during the morning. At lunch, the student became upset when he believed a peer sat beside him "just to make him mad." This escalated to taking the peer's milk carton and the lunch monitor intervening with a directive to give the milk carton back. The student then escalated to throwing the milk carton and flinging his lunch tray down the lunch table to fall onto the cafeteria floor. The student left the cafeteria where he hit the walls and threw a bear. Once he returned to the classroom, he flipped his desk over and was then escorted to the office. The second incident involved not being given a "red circle" by a peer that escalated to the student grabbing the item from a peer to the student grabbing and kicking a second peer which then escalated into kicking the teacher's math storage container and breaking one of the drawers.

An email correspondence dated May 16, 2017 from the mother written to A., School Psychologist; Inga Kelly, Gifted Instructor; and E. Hoffman, a staff member with KANZA Mental Health; shows the mother requesting a Behavior Intervention Plan (BIP) for the student. The mother explained that she believes the student's behavior was a result of being extremely over-stimulated in the lunchroom or perhaps that he did not have his medication that morning. She emphasized the desire to be proactive rather than reactive.

Ms. A. responded to the mother and others who received the email via an email dated May 18, 2017. In the email, Ms. A. indicates a plan will be in place when school starts next August and asks the mother to provide a list of calming strategies the student uses.

In interviews, the mother, the father, and school staff have all acknowledged that the student has displayed an increase in behavioral problems that interfere with the student's performance in the 5th grade classroom.

School staff report the school as a whole are working with the Kansas Technical Assistance Network (TASN) on implementing a school-wide multi-tiered system of support to address appropriate behavior and that the student was observed during classroom observation by the behavior specialist on September 15, 2017 as part of the SIT strategies including the development of a BIP and continued monitoring by the SIT. The school believes these behaviors have escalated during the 2017-18 school year as a reaction to the parent's divorce and the fact that the student's current 5th grade classroom teacher is co-habitating with the father.

However, interviews with the mother found that she believes these behaviors are a result of the ADHD and ODD diagnoses and have been exhibited over an extended period of time. An interview with the father as well as documentation in the form of emails found that he believes these behaviors are a choice made by the student.

Regardless, the mother made a written request for a reevaluation in the area of social/emotional on September 18, 2017 in an email written to Mr.S., Dr.H, Ms. A., V., Gifted Instructor, and T., Superintendent at USD #___. Dr. H. responded on the same date in an email which detailed the evaluation process and informed the mother that according to the Kansas Department of Education, the school has up to 15 school days to respond to a parent's request for an evaluation.

On September 27, 2017, the district responded to the mother with PWN refusing to reevaluate the student because a comprehensive evaluation was conducted on May 3, 2017 which includes assessment in the area of social / emotional / behavioral. Completing the requested reevaluation was rejected because the student's recent initial evaluation included the requested information and that comprehensive evaluation resulted in the student being found eligible in the exceptionality category of Gifted and an IEP being developed and implemented.

On November 6, 2017, the ____ Special Education Cooperative received a written request from the father revoking consent for all special education services, specifically the gifted instruction. PWN for revocation of consent was provided to both parents on that date. The father provided written consent for the revocation of services on November 10, 2017 and the gifted services were stopped.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated as it appears USD #___ and the ____ Special Education Cooperative have followed appropriate evaluation procedures and have provided the mother with appropriate prior written notice regarding eligibility, special education services, and revocation of consent.

However, it is noted that mother may wish to explore her right to request an Independent Educational Evaluation (IEE) as described in the Procedural Safeguards and at federal regulations, at 34 C.F.R. 300.502.

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____
Nancy Thomas
Complaint Investigator

(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)

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KANSAS STATE DEPARTMENT OF EDUCATION

EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 25, 2017

DATE OF REPORT: OCTOBER 25, 2017

This report is in response to a complaint filed with our office by _____ on behalf of her daughter, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the mother."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USO #___ by telephone on October 3 and October 13, 2017. USO #___ made the following staff persons available to be interviewed:

- CM, Special Education Teacher at _____ High School for both the 2016-17 and 2017-18 school years
- M.C., Special Education Coordinator at _____High School for the 2017-18 school year
- J. N., Principal for the 2017-18 school year and Assistant Principal for the 2016-17 school year at _____ High School

The Complaint Investigator spoke to the complainant by telephone on October 3 and October 21, 2017. The following person was interviewed:

- Mother

In completing this investigation, the complaint investigator reviewed the following material:

- Individualized Education Program (IEP) for the student dated September 29, 2016
- IEP for the student dated January 6, 2017
- IEP for the student dated April 19, 2017
- The 2016-17 school year Behavior Logs for the student dated September 8, 2016 through May 15, 2017

- The 2017-18 school year Behavior Logs for the student dated August 15 through October 6, 2017
- Letter to the investigator written by Ms. M. dated October 6, 2017

Background Information

This investigation involves a sixteen year-old student who was enrolled at _____ High School in USO #___ as an eleventh grade student during the 2017-18 school year and as a tenth grade student during the 2016-17 school year.
Previously, the student was enrolled and received special education at _____ High School in USO #204.

Documentation shows the student has medical diagnoses of Epilepsy, Cerebral Palsy, Autism, Hydrocephalus, and Methylenetetrahydrofolate Reductase. Records indicate the student was most recently found eligible for special education and related services as a student with a disability during a three year reevaluation conducted on October 8, 2015.

Issues

The complainant raised one issue which was investigated.

> **ISSUE ONE:** The USO #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the past 12 months, specifically by not documenting behavior occurrences using behavior data sheets and behavior logs as required by the Individual Education Program (IEP) and Behavior Intervention Plan (BIP).

Findings:

Federal regulations, at 34 C.F.R. 300.323, require each school district to have an IEP in effect and implemented for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part Bat the beginning of the school year. Federal regulations, at 34 C.F.R. 300.320, require that in the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior and, for children for whom a Behavior Intervention Plan (BIP) is developed, that BIP must be included in the IEP.

Documentation shows there were three IEPs in effect for the student during the past twelve months covered by this investigation dated September 29, 2016, January 6 and April 19, 2017. All three IEPs included a BIP which required data to be collected using a behavior data sheet and a behavior log.

The mother shared concerns that the school district has not documented the self-injurious behaviors of the student as required by the BIP since enrolling at _____ High School at the beginning of the 2016-17 school year. After an incident at the beginning of the 2017-18 school year, the mother reported that she requested to review the student's Behavior Logs and the Behavior Data Sheets and this was when she learned that only behavior data sheets and no behavior logs were being kept for the student.

The mother reports the purpose of using a behavior data sheet was to keep a frequency count of the self-injurious behaviors while the purpose of the behavior log was to keep a description of the antecedent - behavior - consequence (ABC) data for each incident. The mother stated that both of these types of data are required by the student's BIP and are necessary to allow the IEP team to review and revise the BIP to meet the needs of the student. The mother reports both types of data were recorded while the student was enrolled at _____ High School and that she shared this information with Ms. M. in August 2017 upon learning the behavior log was not being kept.

Ms. M. reported that she believed the behavior data sheet and the behavior log were the same and stated it was "an innocent mistake" on her part for not knowing the difference. Ms. M. indicated that the mother made her aware of the difference between these data collection methods on or about August 15, 2017. Ms. M. asked the mother for a copy of the behavior log form; however, the mother never provided her a copy to use. On or about September 18, 2017, the _____ High School staff reported contacting the staff at _____ High School for a copy of the behavior log that was used previously. This document was shared with the parent and is currently being reviewed and revised through the annual IEP team meeting process that began on September 26, 2017.

_____ High School staff acknowledge that only frequency data has been collected regarding the student's self-injurious behavior during both the 2016-17 and 2017- 18 school years. The student's Behavior Data Sheets for the 2016-17 school year show a total of 82 incidents on 12 days in September 2016; 49 incidents on 8 days in October 2016; 162 incidents on 17 days in November 2016; 40

incidents on 3 days in December 2016; 93 incidents on 11 days in January 2017; 92 incidents on 11 days in February 2017; 66 incidents on 4 days in March 2017; 183 incidents on 13 days in April 2017; and 76 incidents on 4 days in May 2017. No behavior data sheets were provided for extended school year (ESY) in June 2017 but school staff reported there were no incidents of self-injurious behavior during that timeframe. The student's Behavior Data Sheets for the 2017-18 school year show a total of 12 incidents on 13 days in August 2017; 72 incidents on 20 days in September 2017; and 68 incidents on five days through October 6, 2017.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in the following area:

- 34 C.F.R. 300.323 requires each school district to have an IEP in effect for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part B at the beginning of the school year. Federal regulations, at 34 C.F.R. 300.320, require that in the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior and, for children for whom a Behavior Intervention Plan (BIP) is developed, that BIP must be included in the IEP. The documentation and interviews found that in this case, the student's IEP in effect during the past 12 months did include a BIP which required data to be collected through the use of a behavior data sheet and a behavior log. School staff acknowledged that only frequency data on the self-injurious behavior was collected during the 2016-17 school year but indicate this was a mistake based on the special education teacher's misunderstanding of the need to also collect ABC data for each incident in a behavior log. However, even when the mother made school staff aware for the need to collect this type of data at the beginning of the 2017-18 school year; no behavior log data was collected on the 152 incidents of self-injurious behavior between August 15 and October 6, 2017. School staff reported this was because the mother did not provide a data collection form for the school to use to collect this type

of data. After approximately a month, the school staff finally contacted the previous school for a copy of the data collection form; however, even after receiving this sample form from _____ High School in mid- September 2017, no behavior log data was collected as required by the student's BIP as part of the IEP.

Based on the foregoing, USO #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
   a) Comply with 34 C.F.R. 300.320 and 34 C.F.R. 300.323 by ensuring that the IEP and BIP of all students eligible for services under the IDEA will be in place at the beginning of each school year and implemented as written.

2. No later than November 15, 2017, Ms. M. shall be trained on how to create a behavior log and to accurately record antecedent - behavior - consequence (ABC) data on a behavior log. This training will be provided by a person approved by the KSDE. USO #___ will document who provided the training and the content of the training and send that documentation to Early Childhood, Special Education and Title Services.

3. In addition, no later than November 15, 2017, Ms. C. and Mr. N. shall develop a procedure to monitor the implementation of the student's BIP on a regular basis. This plan will be provided to and approved by Early Childhood, Special Education and Title Services

4. No later than December 23, 2017, the IEP team for the student will meet to consider conducting a functional behavioral assessment (FBA) of the student in order to have both frequency and ABC data to consider in the review/revision of the student's BIP as current frequency data continues to support the need for a BIP but does not provide any data to ascertain the function of the self-injurious behaviors displayed by the student.

5. Further, USO # ___ shall, within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

a) a statement verifying acceptance of the corrective action or actions specified in this report;

b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

N_____
Complaint Investigator

(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)

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KANSAS STATE DEPARTMENT OF EDUCATION

EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON OCTOBER 11, 2017

DATE OF REPORT: NOVEMBER 11, 2017

This report is in response to a complaint filed with our office by _____ on behalf of her daughter, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the mother."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ by telephone on October 23, 2017. USD #___ made the following staff persons from the Interlocal Learning Center (ILC) #___ available to be interviewed:

- M, Special Education Administrator
- N, Vocational Special Needs Coordinator and Teacher
- P, Job Coach

The Complaint Investigator spoke to the complainant by telephone on October 18 and October 30, 2017. The following person was interviewed:

- Mother

In completing this investigation, the complaint investigator reviewed the following material:

- Individualized Education Program (IEP) dated May 11, 2017
- Prior Written Notice (PWN) for Identification Initial Services, Placement, Change In Services, Change Of Placement, And Request For Consent signed by the mother on May 11, 2017
- Student Weekly Schedule for the 2017-18 school year created by ILC #___ and USD #___
- Chart of vocational services provided between August 22 through October 12, 2017 compiled by ILC #___ and USD #___
- Zoo Sign-in Sheets for the months of August, September, and October 2017
- _____ USD#___ Student Handbook for the 2017-18 school year

- Staff Job Rating Evaluations dated between August 22 and October 12, 2017
- Student Job Rating Evaluations dated between August 22 and October 12, 2017
- Education Application to volunteer at the ____ County Zoo signed by mother on August 8, 2017
- TB test results signed by Dr. Javonna Villarreal dated September 27, 2017
- Tuberculosis Symptom Screening Questionnaire/ Deferral of TB Skin Test During National POD Shortage for the student dated August 15, 2015
- Timeline of events for September 7 through October 3, 2017 compiled by the mother
- Email from mother to the investigator dated October 22, 2017 summarizing alleged noncompliance
- Weekly schedule summary created by mother
- Bill for TB test dated September 30, 2017 for $11.65 showing a TB intradermal test was administered to the student on September 25, 2017

Background Information

This investigation involves a twenty year-old student who is enrolled in the twelfth grade at USD #___ during the 2017-18 school year. The student attends the Transnet program through ILC #___ to receive her special education and related services.

Documentation shows the student has a medical diagnosis of Cerebral Palsy and displays significant delays in the areas of cognition, communication, adaptive behavior, social skills, as well as fine and gross motor skills. Records indicate the student was most recently found eligible for special education and related services as a student with a disability during a three year reevaluation conducted on September 7, 2016.

Issues

The complainant raised one issue which was investigated.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the 2017-18 school year, specifically by not providing the vocational special needs services as required by the Individual Education Program (IEP).

Findings:

Federal regulations, at 34 C.F.R. 300.323, require each school district to have an IEP in effect and implemented for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part Bat the beginning of the school year.. 34 C.F.R. 300.101 requires school district's to make a free appropriate public education available to all children residing within the district. 34 C.F.R. 300.17 defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

Documentation and interviews found there have been two IEPs in effect for the student during the current 2017-28 school year to date. The first IEP was developed on May 11, 2017 and the second was developed on October 23, 2017. The May 11, 2017 IEP was the IEP in effect during the timeframe of this investigation.

The May 11, 2017 IEP requires vocational special needs services through her community based vocational placement for 83 minutes a day on two days per week with job-coach assistance. It is noted the PWN dated May 11, 2017 shows 85 minutes on four days per week as the timeframe for providing the vocational special needs services; however, the parent's understanding was the timeframe was the 83 minutes a day on two days per week as documented in the IEP and this will be the timeframe that will be used in this investigation.

The mother shared concerns through documentation and interview that the school district did not provide the vocational special needs services as required by the IEP. Specifically, the mother believes these services were not provided to the student until September 28, 2017 due to transportation issues and because the student was not eligible to work at the ____ County Zoo due to not having the required TB test completed prior to that date. The mother also believes the student was only provided 75 minutes of vocational special needs services between September 28 and October 5, 2017 at the ____ County Zoo. The mother acknowledges she opted out of the vocational special needs services on September 19, September 26, October 3, and October 10, 2017 so that the student could attend Reins of Hope. The mother also acknowledged that the vocational special needs services were provided as required by the IEP beginning on October 12, 2017.

The student's weekly school schedule provided by the mother shows vocational special needs services were to be provided on Tuesdays and Thursdays between 12:30 until 1:45 p.m. for a total of 75 minutes per day until October 12, 2017. The student's weekly schedule provided by the school shows the student is scheduled to be at the zoo from 12:00 noon until 1:30 p.m. for a total of 90 minutes. Interviews found this timeframe includes transportation time to/from the zoo. Zoo sign-in sheets document the student worked at the zoo on the following dates and times:

Date	Times	# of total minutes
August 29	12:42-1:15 p.m.	33 minutes
August 31	12:42 -1:25 p.m.	43 minutes
September 12	12:49 - 1:35 p.m.	46 minutes
September 14	12:55 - 1:45 p.m.	50 minutes
September 21	12:45 - 1:50 p.m.	65 minutes
September 28	1:00 - 2:00 p.m.	60 minutes
October 5	Time is illegible	Assuming average of previous services for this date of 50 minutes

The school staff and mother agree that vocational special needs services were to begin on August 22, 2017. School district staff acknowledged that no vocational special needs services were provided to the student on August 24, September 5, and September 7 due to transportation issues. The mother acknowledged that vocational special needs services were provided to the student at the ____ County Zoo on September 28 and October 5, 2017.

School staff reported a TB skin test is required for student's to volunteer at the ____ County Zoo and it is noted that the student's vocational placement was at the ____ County Zoo during the 2015-16, 2016-17, and 2017-18 school years. Documentation shows the student was exempted from this requirement due to a shortage of TB serum on August 15, 2015. School staff reported this exemption was in effect during the 2015-16 and the 2016-17school years. For the 2017-18 school year, the ____ County Zoo again required a TB skin test for volunteers; however, the school staff reported that the student's previous exemption was in place until such time that the TB skin test was obtained and documentation shows the student signed in as a volunteer beginning on August 29, 2017.

School staff reported that the families of three other students placed at the ____ County Zoo for vocational special needs services were informed of the requirement for the TB test on August 29th or August 30th The mother indicated she did not learn of the TB skin test requirement until September 21, 2017 when the student came home and told her she needed the TB skin test in order to work at the zoo. The school staff were unsure of when and how the mother was informed of the TB skin test requirement and no documentation was provided showing such notification. Documentation did show the parent signed the student's application to volunteer at the ____ County Zoo on August 30, 2017. Documentation and interviews found the mother obtained a TB skin test for the student on September 25, 2017 and the results were provided to the school on September 27, 2017. The Student Handbook for the 2017-18 school year documents the USD #___ policy is that parents are encouraged to have insurance on their children prior to participation in any sport or school-sponsored activities.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in the following area:

- 34 C.F.R. 300.323 requires each school district to have an IEP in effect for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part Bat the beginning of the school year. 34 C.F.R. 300.101 requires school district's to make a free appropriate public education available to all children residing within the district. 34 C.F.R. 300.17 defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

  The documentation and interviews found that in this case, the student's IEP in effect at the beginning of the 2017-18 school year did require the student to receive vocational special needs services for 83 minutes per day for two days per week beginning on August 22, 2017.

  Documentation and interviews found the vocational special needs services were to be provided to the student at the ____ County Zoo on Tuesdays and Thursdays during the 2017-18 school year. An application

to volunteer was signed by the parent on August 30, 2017. While a TB skin test was required by the ____ County Zoo, the previous exemption was accepted until a current TB skin test was completed on August 27, 2017.

Documentation and interviews found the following vocational special needs services were provided to the student:

Date	Times of service	Amount provided	Amount not provided
August 22	None documented	0	83 minutes
August 24	Not provided due to bus issues	0	83 minutes
August 29		33 minutes	50 minutes
August 31		43 minutes	40 minutes
September 5	Not provided due to bus issues	0	83 minutes
September 7	Not provided due to bus issues	0	83 minutes
September 12		46 minutes	37 minutes
September 21		65 minutes	18 minutes
September 28		60 minutes	23 minutes
October 5		Estimate of 50 minutes	33 minutes

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
   a) Comply with 34 C.F.R. 300.320 by ensuring that the IEPs of all students eligible for services under the IDEA will be in place at the beginning of each school year and implemented as written.

2. In addition, no later than January 1, 2018, Mr. M. and Ms. N shall review procedures and practices for monitoring and documenting the implementation of students' IEPs, documenting the communication of pertinent information to parents, and monitoring for congruence between

the IEPs and PWN. This plan will be provided to and approved by Early Childhood, Special Education and Title Services.

3. No later than January 15, 2018, the IEP team for the student will meet to determine a plan to provide a minimum of 533 minutes of compensatory services for the student. The parent shall have the option of accepting all, part of, or none of the services proposed in the plan for compensatory services. A copy of this plan will be provided to Early Childhood, Special Education and Title Services, along with a statement of the portion of the plan, if any, accepted by the parent.

4. Further, USD# ___ shall, within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____ *ll-11-11*

Nancy a
Complaint Investigator

(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 (£)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON NOVEMBER 20, 2017

DATE OF REPORT: DECEMBER 20, 2017

This report is in response to a complaint filed with our office by ____ and ____ _____ on behalf of their daughter, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the mother" and both ____ and ____ ____ will be referred to as "the parents."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ and the _____ Special Education Cooperative by telephone on December 13, 2017. USD #___ and the ____ Special Education Cooperative made the following staff persons available to be interviewed:

- Dr. H, Director of Special Education at _____ Special Education Cooperative
- Dr. W, School Psychologist for USD #___
- B, Principal at ____ Middle School in USD #___

The Complaint Investigator spoke to the mother by telephone on December 4 and December 12, 2017. In addition, the Complaint Investigator spoke to C, School Counselor at ____Middle School in USD #___, on December 11, 2017 at the request of the mother.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Email from the mother to the Complaint Investigator dated December 13, 2017
- Timeline of Events dated August 28 through November 20, 2017 created by the mother
- Letter from the mother to Dr. W dated September 8, 2017
- Email from Dr. H to school psychologists and gifted facilitators dated September 21, 207

- Email from Mr. B and the mother dated September 22, 2017
- Letter from the mother to Dr. H dated September 25, 2017
- Email from Dr. H to the mother dated September 27, 2017
- Letter from the mother to Dr. H dated September 27, 2017
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated October 6, 2017
- Email from the mother to Dr. W dated October 10, 2017
- PWN for Evaluation or Reevaluation and Request for Consent and with parent letter dated October 12, 2017
- Email exchanges between the mother and Dr. W dated October 17, October 18, October 19, October 30 and October 31, 2017
- Multidisciplinary Team Eligibility & Evaluation Report dated November 10, 2017
- The Kansas Department of Education Eligibility Indicators, June 2017 edition
- The Kansas Department of Education Special Education Services Process Handbook, 2011 edition

Background Information

This investigation involves a ten year-old student who is enrolled at ____ Middle School in USD #___ as a seventh grade student during the 2017-18 school year.

Documentation shows the student was originally evaluated for the Gifted Program during the 2014-15 school year. At that time, the multidisciplinary team determined the student did not meet the eligibility criteria to be identified as a child with an exceptionality under the category of Gifted.

Issues

The complainant raised one issue which was investigated.

ISSUE ONE: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate evaluation procedures for the student during the 2017-18 school year.

Findings:

Federal regulations, at 34 C.F.R. 300.301 provides for parents to request an initial evaluation for their child if they suspect a disability. Within a reasonable amount of time of the public agency receiving such a request, the district shall either accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or refuse the request and provide the parent with written notice refusing the request. In Kansas, a reasonable amount of time is considered to be within 15 school days of the parent request for an evaluation.

If the district accepts the request, a Review of Existing Data must be conducted as described in federal regulations, at 34 C.F.R 300.305. This Review of Existing Data may be conducted without a meeting but must include a review of existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based, local or State assessments, classroom based observations, and observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals, as appropriate, shall identify what additional data, if any, are needed to determine if the child has a particular category of disability and the educational needs of the child.

Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents when the responsible public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action.

State and federal regulations, at 34 C.F.R. 300.301 and K.A.R 91-40-8(f), require that an evaluation of the child shall be completed and an eligibility

determination shall be made within 60 school days from the date the public agency received written consent from the parent to proceed with an evaluation.

State and federal regulations, at 34 C.F.R 300.8 and K.A.R. 91-40-1(k)(w), require multidisciplinary teams to ensure that the student meets the definition of one of the categories of exceptionality and, as a result of that exceptionality, needs special education and related services. This is often described as the "two prong" test of eligibility under the IDEA. If a child meets the definition of an exceptionality category but does not need special education and related services, the child will not be determined to be eligible. If the child has a need for special education and related services but does not meet the definition of an exceptionality category, the child will not be determined to be eligible. The child must meet both prongs in order to be eligible under IDEA.

Federal regulations, at 34 C.F.R. 300.502, require that the parents of a student with a disability have a right to obtain an Independent Educational Evaluation (IEE) of their child at public expense for any agency evaluation with which the parents disagree. That right is subject to the requirement that the independent evaluation must meet the educational evaluation criteria used by the responsible public agency when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation. "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

The mother reported the student's grades and standardized test scores were significantly above average as compared to her peers during sixth grade as well in previous grades. The mother also reported USD #___ provided information that the student was eligible to participate in the Duke University Talent Identification Program (Duke TIP) due to scoring at or above the 95th percentile on the district-wide academic assessment during the sixth grade. The mother believed these achievements were indicators that the student should participate in the Gifted Program.

Documentation and interviews noted the parents met with Mr. B, Principal, and Mr. C, School Counselor, on or about August 28, 2017 to discuss the possibility for the student participating in the gifted program during seventh grade. School staff indicated the parent request was then referred to Dr. W, School Psychologist.

On or about September 7, 2017, Dr. W, and the mother spoke via telephone to discuss the request. At that time Dr. W informed the mother the student's IQ score from the previous gifted testing did not meet the eligibility criteria and new IQ testing was recommended. A letter from the mother to Dr. W dated September 8, 2017, refers to a meeting being scheduled for September 13, 2017 to further discuss the evaluation for the gifted program.

A meeting was held on September 13, 2017 with the parents, Dr. W and Mr. C in attendance. At this meeting the mother shared Kansas eligibility criteria contained in The Kansas Department of Education Eligibility Indicators requiring the student to have data to support at least one indicator from each of the following three categories to meet Prong 1: Does the child exhibit an exceptionality:

1. Evidence of performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields

- *Measures, record reviews, interviews, and/or observations indicate child demonstrates superior reasoning and problem solving ability.*
- *Progress monitoring indicates child's skill level in one or more academic areas is much above that of peers.*
- *Grade Point Average, classroom assessments, portfolios, or rubrics indicate significant excellence in academics.*
- *District, state, and national assessments indicate significant excellence in academics.*
- *A rank of not less than the 95th percentile on national norms on a standardized, norm-referenced achievement test in one or more of the academic fields (mathematics, language arts (including reading), science, and social science), or evidence that such test scores do not adequately reflect the child's excellence in academics. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience.*
- *College entrance exams indicate significant excellence in academics.*
- *Pre-tests consistently indicate child has already mastered end of unit/curricular objectives prior to instruction.*

2. Evidence of being due to intellectual ability

- *Measures, record reviews, interviews, and/or observations indicate child shows persistent intellectual curiosity and asks searching questions.*
- *Measures, record reviews, interviews, and/or observations indicate child shows initiative and originality in intellectual work.*

- *Ease of task completion indicates a significantly high level of intellectual ability.*
- *Rate of acquisition and retention indicate a significantly high level of intellectual ability.*
- *Products from home or school indicate a significantly high level of intellectual ability.*
- *A composite rank of not less than the 97th percentile on an individually administered, standardized, norm-referenced test of intellectual ability, or evidence that the child's standardized, intelligence test score does not adequately reflect the child's high intellectual potential. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience.*

3. Evidenced that when compared to others of similar age, experience and environment

- *Multiple characteristics of giftedness exhibited when interventions provide adaptations, enrichment, or acceleration as compared to peers, with consideration given to cultural or linguistic differences.*
- *Persistence to task and generalization of knowledge gained indicate a remarkably high level of accomplishment.*
- *Coursework analysis indicates a significantly high level of intellectual ability and excellence in academics when provided with interventions.*
- *Performance significantly higher than peers in one or more areas on benchmark assessments, curricular objectives, or state assessments, with consideration given to cultural or linguistic differences.*

The parents expressed their belief that the student met the eligibility criteria to participate in the program based on the previous evaluation information, the current grades and standardized academic testing results and the information in the Kansas laws that the IQ test was not the only indicator that could be used to determine eligibility. Dr. W explained that USD #___ requires an IQ test for consideration of the Gifted Program and that he was only aware of one previous student who had been found eligible for the Gifted Program who had not met the district's IQ policy. Dr. W indicated that he would need to discuss the situation with Dr. H, Director of Special Education, at the _____ Special Education Cooperative, and that someone would get back with the parents regarding their request.

Documentation shows that on September 21, 2017, Dr. H sent an email to all school psychologists and gifted facilitators in the cooperative reminding them of "the long standing practices related to gifted eligibility" and the need to "seek convergence of data from all four areas to be considered for placement in gifted education" as follows:

1. The student must score on or about two standard deviations from the mean (128-130) on an individually administered IQ test
2. The student must attain a score on an achievement assessment commensurate with the IQ score
3. The student must have work samples that are at a higher level than age peers
4. The student must demonstrate the need for additional services that are not available in the general education classroom.

On or about September 22, 2017, Dr. W and Mr. B called the mother to inform her that district's procedure and practice is that an IQ test is required for students to be considered for the Gifted Program. The mother was referred to Dr. H, Director of Special Education, for any questions.

The mother reported she then contacted the Kansas Parent Information and Training Center, Families Together, for information. The mother was advised to request a comprehensive evaluation and was informed of the evaluation process and timelines.

On September 25, 2017, the mother made a formal written request via email to Dr. H for the student to receive a comprehensive evaluation to be considered for gifted services. The email describes the indicators under the three eligibility criteria that the parent believes the student exhibits and would like to have considered in making any eligibility determination. The parent lists the following as the evidence of intellectual ability:

1. Measures, records reviews, interviews, and/or observations indicate child shows persistent intellectual curiosity and asks searching questions
2. Ease of task completion indicates significantly high level of intellectual ability
3. Rate of acquisition and retention indicates a significantly high level of intellectual ability

On September 27, Dr. H responded to the mother via email and stated "*Gifted eligibility is determined based on a convergence of data from four areas, intellectual, achievement, academic performance, and demonstrated need. This has been the Coop practice for the 22 years I have been here in the capacity of*

Director and remains so today. The practice will be applied in evaluating your daughter for eligibility determination. I will be happy to ask Dr. W to forward the necessary paperwork to begin the evaluation process."

That same day, the mother responded to Dr. H via email and requested for Dr. W to proceed with the paperwork to begin the gifted evaluation. The mother also explained that the parents believed the student already meets the following indicators in Prong 2: Does the child need special education (specially designed instruction) and related services?:

1. Progress monitoring data indicate intense or sustained resources needed in order for child to demonstrate appropriate progress.
2. Evidence of mastery of successive levels of instructional objectives or course requirements indicates the need for intensive adaptations or acceleration.
3. Progress monitoring data show that differentiated instruction and targeted interventions are insufficient for child to demonstrate appropriate progress.
4. Intensive changes or modifications needed in instruction, curriculum, grouping, assignments, etc. for the child to demonstrate appropriate progress.
5. General education interventions such as alternate course selections or cross-age grouping are insufficient to support the child's progress.

In addition, the mother clarified in the same email that the USD #___ School Board Policy adopted in 2014 requires that the district shall coordinate and maintain a system which schedules and structures available services for pupils who are referred to determine eligibility for special education services in accordance with procedural processes established in Federal and state law.

A Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated October 6, 2017 was provided to parents. This notice proposed a special education evaluation due to the parent's request for additional testing and information to help determine possible placement in the district's "Gifted Education" program. The notice proposed additional testing in the areas of general intelligence and academic performance.

The mother responded to the notice on October 10, 2017 via an email to Dr. W that she was under the impression that a meeting was to be scheduled with the evaluation team to discuss the evaluation and she was requesting a prompt meeting to further discuss the proposed evaluation of the student.

On October 12, the parents signed consent for an evaluation with specific restrictions described in a letter attached to the PWN and in handwritten notes on the PWN itself. The parents initialed that they were in agreement to conduct an evaluation for the student and that current data existed in the areas of vision and hearing. However, the parents did not agree for new data to be collected in the areas of general intelligence and academic performance.

For the area of general intelligence, the parent's handwritten notes show "No new testing is needed use existing results. State Assessment test results show rate or retention. Teacher input on task completion and persistent intellectual curiosity." For the area of academic performance, the parent's handwritten notes show "we will use her MAP scores. Teachers are collecting work samples."

The letter attached to the PWN documented that the parents believed that a formal meeting with the evaluation team should have been held prior to proceeding with the proposed evaluation. But in lieu of that meeting, the letter would serve as parental input for the proposed evaluation. The letter goes on to state that the parents "*do not consent and are not requesting for the student to have any additional testing. We are requesting that she be evaluated for gifted as defined by the Kansas Department of Education. As stated in Kansas Law regarding evaluations for gifted and talented students, we are requesting other indicators (not solely an IQ test) to be used in the intellectual ability category. According to the Kansas Department of Education, one indicator is needed for each category under Prong 1. When following the USD #___ Child Find, Identification and Eligibility guidelines, which states eligibility for services follow the Federal and state law, it is evident that no additional testing is required. The student has shown through her entire general education career as noted and documented with teachers, testing, and assessments her exceptionally high rate of acquisition and retention to what she is exposed to. Year after year her teachers have continually commended on her extreme ease of task completion. The student also portrays, at a very high level, her desire to reach higher levels and expresses this in class with her persistent and inquisitive classroom participation. With all of these above statements and evidence to support more than three indicators in the above listed category, we as parents feel doing another IQ test (as requested by EKC Special Education Cooperative) is not warranted. This test has already been performed and the results are on file (to be used as existing data). The student demonstrates more than enough evidence of high intellectual ability (according to Kansas law) without a new IQ test."*

Documentation shows the multidisciplinary team consisting of Dr.W., Mr. C, and Mr. B, three of the student's general education teachers, a classroom paraprofessional, and both parents met on November 10, 2017. At the meeting this team reviewed the results of the evaluation to determine eligibility. The Evaluation Report documents the assessment procedures included a file review, teacher and parent input, teacher reports and work samples from November 2017 (new data), measures of academic progress based on three years of MAP scores in math and reading (existing data), the Wechsler Intelligence Scale for Children – fourth edition from May 2015 (existing data), and the Woodcock Johnson Test of Cognitive Abilities from November 2015 (existing data). The Evaluation Report documents the student is not eligible for special education under the exceptionality category of Gifted because her general education teachers reported that the student performs well in the classroom and is adequately challenged in her general education classes. The Evaluation Report also documents the student has excellent achievement scores and performs well in the classroom setting but that individual assessmens of academic and intellectual ability fall within the high average range. The report concludes that an exceptionality is not substantiated by convergent data from multiple sources. The Evaluation Report documents that the school staff all agreed with the conclusions while the parents were in disagreement.

USD #___ staff report the parent was provided with a copy of the Evaluation Report but was not provided with a PWN refusing to identify the student as eligible for special education under the exceptionality category of Gifted.

Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is substantiated in regards to providing appropriate PWN. However, documentation and interviews found USD #___ did follow the required procedures and timelines in regards to conducting a review of existing data without a meeting, conducting the evaluation within 60 school days of parent consent for an evaluation, and making an eligibility determination in accordance with The Kansas Department of Education Eligibility Indicators, June 2017 edition.

It is noted that because the parents did not agree with the evaluation conducted by USD #___, they may wish to explore their right to request an Independent Educational Evaluation (IEE) as described in the Federal regulations, at 34 C.F.R. 300.502.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in the following areas:

- Federal regulations, at 34 C.F.R. 300.301, provide for parents to request an initial evaluation for their child if they suspect a disability. Within a reasonable amount of time of the public agency receiving such a request, the district shall either accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or refuse the request and provide the parent with written notice refusing the request. In Kansas, a reasonable amount of time is considered to be within 15 school days of the parent request for an evaluation.

  In this case, the initial request for an evaluation for the Gifted Program was made by the parents on or about August 28, 2017 in a meeting with the school principal and school counselor at USD #___. USD #___ and the _____ Special Education Cooperative responded appropriately and scheduled a meeting with the parents but then failed to provide a PWN proposing an evaluation until October 6, 2017 which is more than 29 school days from the initial parent request.

- Federal regulations, at 34 C.F.R. 300.503, requires that written notice must be given to parents when the responsible public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action.

  In this case, USD #___ and the _____ Special Education Cooperative failed to provide the parent with a PWN refusing to identify the student as a child with an exceptionality following the eligibility determination meeting held on November 10, 2017.

Based on the foregoing, USD #___ and the _____ Special Education Cooperative are directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:

a) Comply with 34 C.F.R. 300.301by responding to a parent request for an initial evaluation in a timely manner by either accepting the request and proceeding with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or by refusing the request and providing the parents with written notice refusing the request. In Kansas, a reasonable amount of time is considered to be within 15 school days of the parent request for an evaluation.
b) Comply with 34 C.F.R. 300.503 by providing parents with appropriate written notice when the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action.

2. No later than January 8, 2018, USD #___ shall provide the parents with a PWN stating the refusal to identify the student as gifted, and include all of the required elements of a PWN, including an explanation of why the decision was made.

3. In addition, no later than February 15, 2018, USD #___ and the East Central Special Education Cooperative will provide training on when and how to provide appropriate written notice to the appropriate school staff including school psychologists, school principals, and school counselors. This training will be provided by a person approved by the KSDE. USD #___ and the East Central Special Education Cooperative will document who provided the training and the content of the training and send that documentation to Early Childhood, Special Education and Title Services.

4. Further, USD #___ and the East Central Special Education Cooperative, within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:
    a) a statement verifying acceptance of the corrective action or actions specified in this report;

    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools: 18FC___-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on November 20, 2017 by _____ _____ on behalf of her daughter, _____ _____. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, an Initial Report, addressing the allegations, was issued on December 20, 2017. That report concluded that there were violations of special education laws and regulations

Thereafter, the parent filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the original complaint, the complaint report, the parent's notice of appeal, the district's written response, and information contained in the complaint file at the Kansas State Department of Education (KSDE). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

DISCUSSION OF ISSUE ON APPEAL

The complaint report concluded that the district followed the required procedures in conducting a gifted evaluation for the student. The parent appeals this decision. In her appeal, the parent states "Other indicators for Prong 1, Section 2 (Evidence of being due to intellectual ability) were not considered." The parent added: "I do not feel all of the indicators were considered or are ever considered when USD # ___/___ Coop performs a gifted evaluation." The parent added a statement made by a School Psychologist that "it is not the practice of the district/cooperative to evaluate each separate indicator to determine eligibility for students in the gifted program," to support her contention.

The parent is referring to a Kansas State Department of Education (KSDE) guidance document, titled "Eligibility Indicators." In the most recent edition of this guide (June, 2017- page 14), guidance is provided for determining eligibility for the category of Gifted (Prong 1). The instructions at the top of the page state: "For meeting this prong of eligibility the team must consider information and have data to support at least 1 indicator from each of the following numbered categories."

The Appeal Committee first notes that the document to which the parent refers is a guidance document. It is not statute or regulation. Second, this guide does not require districts to consider or to have data to support all of the listed indicators for any of the three listed categories. Rather, the instructions state that the district must consider and have data to support "at least one indicator" in each of the categories. With regard to Prong 1, Category 2, the district used at least one indicator listed in that category: A composite rank of not less than the 97th percentile on an individually administered, standardized, norm-reference test of intellectual ability. The Evaluation Report shows

the district used the Wechsler Intelligence Scale for Children and the Woodcock Johnson Test of Cognitive Ability. By doing so, the district fulfilled the requirement to have data to support at least one indicator from Category 2.

Further, the evaluation report shows the district used data from Measures of Academic Progress (MAP) testing for consideration under Category 1, and coursework analysis for consideration under Category 3.

For these reasons, the Appeal Committee affirms the conclusion in the report that the district followed the required procedures in its gifted evaluation for this student.

In the appeal, the parent states that, contrary to the findings in the report, she did request some new data to be considered for Prong 1, Categories 1 and 2. However, the parent did not specify what new data was requested to be considered and how this new data was to be generated when the parent refused to consent to any additional testing with regard to intellectual ability. The Kansas regulation regarding appeals [K.A.R. 91-40-Sl(f)], which was attached to the complaint report, states that an appeal must provide a detailed statement of the basis for alleging the report is incorrect. On this issue, the parent has provided insufficient information for the Appeal Committee to address the concern.

Finally, the Appeal Committee notes that the parent information regarding the student's age is confirmed by the date of birth stated in the Evaluation Report, and the fact that the parent is a primary source for this kind of information.

CONCLUSION

The complaint report is hereby amended to state that the student is twelve years old.

All other findings and conclusions in the original report are sustained. All corrective actions in the original report remain, as stated.

This is the final decision on this matter, there is no further appeal. This Final Report is issued this 16th day of January, 2018.

APPEAL COMMITTEE:

Colleen Riley	Laura Jurgensen	Stacie Martin

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON DECEMBER 7, 2017

DATE OF REPORT: JANUARY 7, 2018

This report is in response to a complaint filed with our office by _____ on behalf of her son, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the mother" or "the parent."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ by telephone on December 11, December 14, December 22, 2017, and January 3, 2018. USD #___ made the following staff persons available to be interviewed:

- Dr. H., Director of Special Education
- K, General Counsel

In completing this investigation, the Complaint Investigator reviewed the following material provided by USD #___:

- Parent Contact Logs for the 2016-17 and 2017-18 school years showing 21 entries dated between October 11, 2016 and September 7, 2017
- PowerSchool Attendance Summary for the student during the 2016-17 school year showing full day attendance through January 13, 2017 and half-day attendance starting on January 18, 2017 through the end of the school year
- PowerSchool Attendance Summary for the student during the 2017-18 school year showing full day attendance through December 19, 2017
- Sign In Sheets and Permit to Leave Building slips for the student during the 2016-17 school year
- General Education Intervention (GEI) Summary including the initial referral dated November 11, 2016, and updates dated January 11, March 31, May 5, and August 18, 2017
- Email from the mother to B, Principal, dated July 18, 2017 requesting a special education evaluation for the student

- Principal Response to Parent Request for Evaluation dated July 18, 2017 explaining the evaluation process and timeline and providing the parent with the Parent's Rights document.
- Email from W, School Psychologist, to the mother dated July 18, 2017 explaining the evaluation process and timeline and requesting input from the mother regarding her concerns
- Email from Ms. B. to Dr. H. dated August 25, 2017 describing the evaluation process and timeline for the student to date
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated August 28, 2017 and dated stamped as received by USD #___ on August 31, 2017 with the mother's written consent
- Notice of Meeting dated September 7, 2017 scheduling an eligibility determination meeting for October 25, 2017
- Notice of Meeting dated October 26, 2017 signed by the mother waiving the 10-day notice requirement
- Evaluation/Reevaluation Report dated October 26, 2017
- PWN for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated October 26, 2017 and signed by the mother on that same date
- Notice of Meeting dated October 31, 2017 scheduling an IEP team meeting for November 14, 2017
- IEP for the student dated November 14, 2017
- Meeting Summary – IEP Team Considerations dated November 14, 2017
- PWN for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated November 14, 2017 proposing 30 minutes per day for 5 days a week of special education instruction in reading; 30 minutes per day for 5 days a week of general education classroom support; and 20 minutes per week (not to exceed a total of 600 minutes per year) of social work services
- Second Steps calendar for the 2016-17 school year
- Student's grade cards for the 2015-16, 2016-17, and 2017-18 school years showing developing skills in the majority indicators for behaviors and academics
- Brochure describing the Family Services and Guidance Center's _____ program

The Complaint Investigator also spoke to the mother by telephone on December 11 and December 29, 2017 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material provided by the mother:

- Letter to the mother from Dr. Daniel Katz, M.D. at the Cotton-O'Neal Clinic 901 Neurology dated December 9, 2016 with diagnosis of Chiari malformation, type I and statement that this diagnosis "does not explain the student's developmental delays, febrile seizures, or his anger problems."
- Notice of Short-Term Suspension dated October 11, 2016 for one day of out-of-school suspension (OSS) for assault to other students
- Elementary Discipline Referral dated October 28, 2016 for fighting/physical contact resulting in missed recess and parent conference
- Elementary Discipline Referral dated October 31, 2016 for fighting/physical contact resulting in removal from classroom and parent conference
- Elementary Discipline Referral dated November 1, 2016 for fighting/physical contact resulting in in-school suspension (ISS) and parent conference
- Elementary Discipline Referral dated November 3, 2016 for fighting/physical contact resulting in ISS and parent conference
- Elementary Discipline Referral dated December 6, 2016 for fighting/physical contact resulting in removal from classroom and parent conference
- Elementary Discipline Referral dated January 11, 2017 for fighting/physical contact resulting in parent conference and student being taken home by parent
- Notice of Short-Term Suspension dated January 18, 2017 for one day of OSS for assault to other students
- Letter to mother from Ms. B. dated March 7, 2017 stating the student missed the bus to the _____ program due to inappropriate behavior at lunch
- Notice of Short-Term Suspension dated April 21, 2017 for one day of OSS for assault to other students

Background Information

This investigation involves a six year-old student who is enrolled as a first grade student at the _____ School in USD #___ during the 2017-18 school year. Previously, the student attended kindergarten at the same school during the 2016-17 school year.

Issues

The complainant raised two issues which were investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date of the allegations. In this case, the time period covered runs from December 7, 2016 through the present.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate evaluation procedures for the student during the past 12 months.

Findings:

Federal regulations, at 34 C.F.R. 300.301, provides for parents to request an initial evaluation for their child if they suspect a disability. Within a reasonable amount of time of the public agency receiving such a request, the district shall either accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in the IDEA or refuse the request and provide the parent with written notice refusing the request. In Kansas, a reasonable amount of time is considered to be within 15 school days of the parent request for an evaluation.

Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents when the responsible public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action.

State and federal regulations, at 34 C.F.R. 300.301 and K.A.R 91-40-8(f), require that an evaluation of the child shall be completed and an eligibility determination shall be made within 60 school days from the date the public agency received written consent from the parent to proceed with an evaluation.

Federal regulations, at 34 C.F.R. 300.323, require that each public agency shall ensure that a meeting to develop an IEP is conducted within 30 days of a determination that the child needs special education and related services and that the special education and related services are made available to the child in accordance with the IEP as soon as possible following the IEP meeting.

Documentation and interviews found that the mother made a written request for an initial special education evaluation on July 18, 2017. Staff at USD #___ responded on that same date via email and letter to the mother describing the special education evaluation procedures and the timeline for the evaluation which would begin on the first day of the 2017-18 school year as well as requesting input from the mother regarding her educational concerns.

The first day of the 2017-18 school year was August 14, 2017 and USD #___ had until September 1, 2017 to make a determination to accept or reject the parent referral.

Documentation and interviews found a PWN for Evaluation or Reevaluation and Request for Consent was mailed to the mother on August 28, 2017. The mother signed consent on August 29, 2017. The form was dated stamped as received by USD #___ on August 31, 2017. Based upon this date, USD #___ had until November 28, 2017 to conduct the evaluation and hold an eligibility determination meeting.

Documentation and interviews found an eligibility determination meeting was held on October 26, 2017 with the mother in attendance. The multidisciplinary team determined the student did meet the eligibility criteria to be identified as a child with a primary exceptionality under the category of Other Health Impaired and with a secondary exceptionality of Specific Learning Disability. The mother was provided a PWN for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated October 26, 2017 proposing eligibility for special education services. The mother signed consent on that same date. Based upon this date, USD #___ had until November 26, 2017 to develop an IEP for the student.

Documentation and interviews found the IEP team met on November 14, 2017 and developed an IEP for the student. The IEP requires special education instruction in reading for 30 minutes per day; support in the general education setting for 30 minutes per day; and social work services for 20 minutes per week (not to exceed 600 minutes per year) to address one reading and one behavior goal. The IEP does not include a Behavior Intervention Plan.

The IEP notes the student will attend first grade in USD #___ for half of the day and then attend the Our Actions Show I'm A Star (_____) program, a therapeutic group for children with serious social problems and behaviour issues in kindergarten and first grade, through the Family Service and Guidance Center of

_____ for the other half of the day. The concerns of the parent section of the IEP documents the mother would like the student to transition from the _____ program to attend the school for full days.

The mother was provided a PWN for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated November 14, 2017 for initial special education services.

Based on the foregoing, USD #___ did appropriately respond to the initial written parent request for a special education evaluation dated July 18, 2017.

However, during interviews, the mother expressed that she had made USD #___ aware that her son was a student with a disability and special needs upon his enrollment in the school district in kindergarten during the 2016-17 school year. She believes USD #___ had reason to suspect her son was a child with a disability and in need of special education services. She indicated that USD #___ should have evaluated the student during his kindergarten year and that he should have been receiving special education services during the 2016-17 school year. The mother stated she verbally requested special services and support for her son during numerous disciplinary conferences with school staff during the 2016-17 year and finally made a formal written request on July 18, 2017 upon the advice of the Disability Rights Center of Kansas.

The mother reports and documentation shows USD #___ was aware that the student was initially found eligible for the infant and toddler program under Part C of the IDEA when the family lived in Georgia. Prior to kindergarten, the student attended a half-day Head Start program combined with a half-day placement for therapy in the ____ program through the Family Services and Guidance Center of _____. The student was out of state with his father during the summer prior to kindergarten and the student lost his placement in the _____ program for the fall of 2016.

The mother indicated she spoke to Ms. B. about the student's special needs upon enrollment and requested a kindergarten teacher who would be willing to provide daily behavior logs and provide behavioral support in the classroom setting. During the first quarter, the student was assigned to Ms. Bartley's classroom and the mother reported the student displayed significant behavioral problems although these are not documented in discipline logs or parent contact logs. During the parent teacher conference at the end of October, the mother

reported Ms. Bartley said she would begin to call campus security rather than the office for the student's aggressive behaviors.

Documentation and interviews found the mother and Ms. B. met following the October parent/teacher conference and the student was reassigned to Ms. Nelson's kindergarten classroom. Tier 1 interventions were provided in the kindergarten classroom through Second Step, a social skills curriculum that all students received based on identified need. Ms. Nelson referred the student for GEI on November 4, 2016 for concerns with phonemic awareness and letter recognition, writing utensil grasp/scissor skills, speech sound production, and emotional regulation, specifically physical aggression towards peers. Tier 2 Interventions were implemented including 20 minutes of additional reading instruction daily, 20 minutes of additional math instruction daily, continued use of a classroom behavior chart and daily notes home regarding behavior.

The January GEI review noted "Student *drinks a cup of coffee in the morning. This appears to calm him down. Mother claims he is ADHD, she does not want him on medication. He goes to Family Services and Guidance Center. He will be starting _____ 1/17/17. He has caught up in letters compared to class. We are going to start focusing on numbers."* The mother reports that she began providing the classroom teacher with K-cups of coffee and creamer for the student to drink each morning in lieu of medication as a strategy to calm the student during the half days of school.

The March GEI review noted "*Team reports that his behaviors are significant and he needs to have a behavior plan. For now the student will go directly from breakfast to Erin and have his coffee. Teacher will keep track of number of violent incidents he has between now and May 19th."*

The May 5, 2017 GEI review noted "*He got into a fight and mom kept him home. He has not been in school for the past week. Parent indicated he will not return this school year. However, she could not control him at home and he was hurting his younger sibling who is a baby. He was choking her, hitting her with a bottle, etc. He has numerous violent fight entries in PowerSchool. He was in _____ all last school year when he was at _____. Teacher thinks he may have ADHD. On days when he gets sent home at 9 a.m. it is not necessarily reflected in PowerSchool. PowerSchool only shows 14 absences but the teacher feels it is much more than that. He knows his letter and sounds and a handful of sight words. He seems capable enough, but his teacher feels he would be an average student if he didn't have behaviors. Behaviors have been a concern all*

year long. Behavior chart did not work because when he got a negative he would tear up the chart. He starts ____ in January (most likely) based on PowerSchool data. His first goal was to get two smiley faces but he was unable to meet that goal."

The May 5, 2017 GEI only includes a description of the problem behavior in a Student Support Plan as "*Attacks when he first enters the classroom. He used to get coffee and go to a bean bag chair and that was helping. However, he then started to attack when he first entered the room before he got coffee. He can also hurt people on the playground. The student only attends school half day. He goes to ____for the other half of the day."* The rest of the Student Support Plan is left blank and there is no documentation to show that a Student Support Plan was developed for the student at this time.

The GEI documentation also includes a summary of additional medical concerns/comments dated August 18, 2017 following the parent's formal request for an initial special education evaluation. The summary states "*School Social Worker reports that the student has been diagnosed with ADHD, Complex Mood Disorder at Family Services and Guidance Center. Medical report indicates acute otitis media, developmental delay, ADHD, symptoms of Oppositional Defiant Disorder. Parent has supplied reports from pediatric neurologist which indicates that here has been on-going evaluation since he was three years old. The neurologist indicates speech abnormality, developmental delay, complex febrile convulsions, ADHD, ODD, and Seizure*." The summary also includes information about the Chiari malformation (type I) and history of head banging and the need for the student to be physically restrained.

Kansas state regulation, under K.A.R. 91-40-7, requires each school board to conduct Child Find activities by adopting and implementing policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction in compliance with federal regulations, at 34 C.F.R. 300.304, 34 C.F.R 300.305, and 34 C.F.R. 300.306. Kansas regulations include a General Education Intervention (GEI) component to allow for targeted intervention strategies to be implemented in the regular education setting prior to a referral for special education unless and until the public agency suspects the student may be a child with a disability in need of special education and related services.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to Child Find is substantiated. USD #___ had ample

reason to suspect the student may be a child with a disability and in need of special education and related services based upon the results and report of GEI as early as March 2017. Kansas allows up to sixty school days from the date the district receives parent consent, to complete an evaluation, and if the child is eligible, to have an IEP in place. If the district had begun the evaluation process in March 2017, as it should have done, this student would have had an IEP in place considerably before the November 14, 2017 date by which the IEP was actually put in place. Even if the district had taken the entire sixty school days to put this student's IEP in place, it should have been in place at least by September 4, 2017. As a result of the district's delay in implementing its child find obligation, this student was denied a free appropriate public education (FAPE) for ten weeks.

> **ISSUE TWO:** The USD #___, in violation of state and federal regulation implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate discipline procedures for the student during the past 12 months.

Findings:

Federal regulations, at 34 C.F.R. 300.534, states that students who have not been identified as disabled may be subjected to the same disciplinary measures applied to students without disabilities if the public agency did not have prior knowledge of the disability. If the public agency is deemed to have knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action, the student may assert any of the protections for students with disabilities in the area of discipline. The public agency has knowledge of the disability when:

> A. the parent has expressed concern in writing that the student needs special education services to supervisory or administrative personnel of the appropriate educational agency or a teacher of the student; or,
> B. the parent has requested an evaluation; or,
> C. the student’s teacher or other school staff has expressed specific concern about a pattern of the student’s behavior directly to the director of special education or to other supervisory personnel in accordance with the agency’s established child find or special education referral system.

The findings of Issue One are incorporated herein by reference.

In this case, USD #___ had reason to suspect the student may be a child with a disability as early as March 2017, when the GEI Review Team reported that his behaviors were significant and he needed a behavior intervention plan. This report was sufficient to constitute knowledge of a disability under 34 C.F.R. 300.534(c). Therefore the student was eligible for protection as a student with a disability in the area of discipline as early as March 2017.

Federal regulations, at 34 C.F.R. 300.530, allow for students with disabilities to be removed from their current educational placement for up to 10 days in a school, without educational services, and before specific procedures and timelines must be followed to ensure the behavior resulting in the disciplinary action is not a manifestation of the child's disability.

Documentation shows the student received OSS on April 21, 2017 for a period of one day from March 2017 until the end of the 2016-17 school year.

However, the mother reported the student was often sent home early from school due to behavioral issues during the 2016-17 school year but she was not able to provide specific dates and times. Documentation from the school also reflects that the student was often sent home by school staff due to behaviors. The notes in the May 5, 2017 GEI update state "*On days when he gets sent home at 9 a.m. it is not necessarily reflected in PowerSchool. PowerSchool only shows 14 absences but the teacher feels it is much more than that."* It is unclear as to the dates of the 14 absences referred to in this documentation.

Because the documentation in USD #___'s Power School program is inaccurate, it is impossible to ascertain the dates the student was actually sent home early by school staff due to behavior to determine if the number exceeded 10 days in the time frame of March – May 2017.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to discipline is substantiated. The practices of USD #___ make it impossible to determine the exact number of days and the dates that the student was removed from the school as early as 9:00 a.m. from the half day kindergarten placement during the period between March through May 2017 when the student should have been protected under the IDEA disciplinary procedural requirements. However, both the mother and the classroom teacher indicated the student was sent home by school staff on at a minimum of 14 occasions which would have required USD #___ to follow appropriate disciplinary procedures and timelines as required by the IDEA.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in the following areas:

a) Kansas state law, under K.A.R. 91-40-7, requires each school board to conduct Child Find activities by adopting and implementing policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction in compliance with federal regulations, at 34 C.F.R. 300.304, 34 C.F.R 300.305, and 34 C.F.R. 300.306. Kansas regulations include a General Education Intervention (GEI) component to allow for targeted intervention strategies to be implemented in the regular education setting prior to a referral for special education unless and until the public agency suspects the student may be a child with a disability in need of special education and related services.

   In this case, documentation and interviews found USD #___ began GEI interventions for academic and behavioral concerns in November 2016. The periodic review of the GEI in January showed academic progress but continued concerns related to behavior. At that time, the student began attending the ____ program for half of the school day and morning coffee was provided as an intervention. The periodic review of the GEI in March found the student's behaviors were "significant" and that a behavior plan was needed despite attending the ____ program for half of the school day. At this point, USD #___ had reason to suspect the student may be a child with a disability and in need of special education services based on the student's history of significant aggressive behavioral problems over an extended period of time and the results in the report of the GEI. However, USD #___ did not follow the required IDEA evaluation procedures and timelines until the mother made a formal written request for an initial special education evaluation on July 18, 2017. It is noted that the student was subsequently found eligible for special education and related services and an IEP was developed and implemented for the student.

b) Federal regulations, at 34 C.F.R. 300.530 and C.F.R. 300.534 require that public agencies follow specific procedures and timelines when disciplining students with disabilities.

In this case, USD #___ failed to demonstrate that these protections were either not necessary or were provided to the student between the time frame the student was eligible for protections in the area of discipline from March through May during the 2016-17 school year.

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
   a) Comply with K.A.R. 91-40-7 as well as 34 C.F.R. 300.304, 34 C.F.R 300.305, and 34 C.F.R. 300.306 by following required evaluation procedures and timelines when there is reason to suspect a student may be a child with a disability in need of special education and related services.
   b) Comply with 34 C.F.R. 300.530 and 34 C.F.R. 534 by following the required procedures and timelines to provide protections in the area of discipline to students with disabilities as well as to students the public agency has the knowledge of that a disability exists.

2. No later than February 15, 2018, the IEP team for the student will meet to develop a plan for compensatory services owed to the student during the 4th quarter of the 2016-17 school year due to USD #___'s decision to delay the initial evaluation despite the results of GEI and until the receipt of the mother's written request. At minimum, the plan shall offer sufficient services to compensate the student for: (a) 10 weeks of missed services due to the failure to begin the evaluation process in a timely manner; and (b) an additional 4 days of educational services missed due to being sent home due to disciplinary reasons for more than 10 days in the 2016-2017 school year. The parent shall have the option of accepting all, part of, or none of the services proposed in the plan for compensatory services. A copy of this plan will be provided to Early Childhood, Special Education and Title Services, along with a statement of the portion of the plan, if any, accepted by the parent.

3. In addition, no later than March 1, 2018, USD #___ will provide training on the factors and threshold for suspecting a student may be a child with a disability and in need of special education and related services to appropriate school staff including school psychologists, school social

workers, school principals, and school counselors. This training will be provided by a person approved by the KSDE. USD #___ will document who provided the training and the content of the training and send that documentation to Early Childhood, Special Education and Title Services.

4. Also no later than March 1, 2018, USD #___ shall review their procedures and practices for recording attendance when a student is sent home by school staff during the school day for any disciplinary reason. USD #___ shall develop a written procedure and a plan to train appropriate staff to implement this procedure. A copy of this written procedure and plan will be provided to Early Childhood, Special Education and Title Services.

5. Further, USD #___ within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools: 18FC___02

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on October 18, 2017, by ____ and ____ _____ on behalf of their son, _____ _____. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, an Initial Report, addressing the allegations, was issued on November 18, 2017. That report concluded that there were violations of special education laws and regulations

Thereafter, on December 1, 2017, the parent filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the report, the parent's notice of appeal, the district's written response, and information contained in the complaint file at the Kansas State Department of Education (KSDE). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

PRELIMINARY MATTERS

First, the Committee will limit its inquiry to the issues presented in the appeal. No new issues will be decided by the Appeal Committee. The appeal process is a review of the complaint report. The Appeal Committee does not conduct a separate investigation. The Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the complaint report.

Second, the Committee believes the complaint report was unnecessarily complicated because: (a) the investigator changed the wording in the parents' original allegations; and (b) in her report, the investigator did not address the parent's issues in the order presented by the parents. These actions resulted in an appeal in which the parents asserted that they did not recognize some of the issues which were being addressed in the report. The Appeal Committee also had difficulty matching allegations in the original complaint to the issues addressed in the complaint report.

The Appeal Committee recognizes that an investigator has a duty to clarify what the actual issues are and to reframe those issues in the report, if that is necessary to accurately address the concerns of the parents. However, when, as was the case in this complaint, the parents disagree with an investigator's revised statement of the issues in the complaint, the Committee believes the investigator should present the issues in the report in the exact words used by the parent. It is, after all, the parent's complaint.

Third, the Committee notes the parents' request on page 24 of the appeal, where the parents state that they request "status reports" with dates for the student that were provided to the state department of education from USD ___ for the 2015-2016, 2016-2017, and 2017-2018 school years. The Committee was unable to discern what specific information the parents are requesting, and recommends that the parents identify the specific information they are seeking and make their request to Scott Gordon, General Counsel, Kansas State Department of Education, Landon State Office Building, 900 SW Jackson Street, Topeka, Kansas 66612.

DISCUSSION OF ISSUES ON APPEAL

The Committee will address the issues on appeal in the order presented in the parent's notice of appeal.

APPEAL ISSUE 1:

In their appeal, the parents state that they do not recognize this issue as an allegation that they made in their original complaint.

The Committee reviewed the original complaint and the complaint report and concluded that Issue 1 in the report addressed Issue 4 in the original complaint. In their appeal, the parents did not contest the findings or conclusions in Issue 4 of the report. Accordingly, the Committee sustains the findings and conclusions in Issue 4 of the report.

The Committee notes the following statement by the parents in their appeal: "It is not ok or legal to change allegations. Ms. Thomas is an investigator, not the complainant." As indicated above, the Committee, in general, agrees with this statement. While not illegal, it is at least inadvisable for an investigator to rephrase an allegation when a complainant expresses a disagreement with the resulting rephrased allegation. On this issue, however, the Committee has determined that Issue 1 in the report adequately addressed Issue 4 in the original complaint.

APPEAL ISSUE 2:

Appeal Issue 2 relates to Issue 5 in the original complaint and to Issue 2 in the complaint report. On page 6 of the report, the investigator cites the student's IEP, dated December 13, 2016, as including the following accommodation: "Allow student to go to a preferred staff member that is available which may include taking a brief break when he becomes frustrated during class." The investigator concluded that this accommodation had been provided because the student did go to a preferred staff member, was permitted to vent, and eventually completed his assignment in the resource room.

The Committee disagrees with this conclusion. A close review of the IEP shows that the rationale for this accommodation is not merely to allow the student to go to a preferred staff member. The stated rationale for this accommodation is: "to assist student in calming." The evidence presented in the report is that the teacher to whom the student

went did not use techniques "to assist" the student in calming. Instead, the teacher's response, which the teacher stated in a February 3, 2017 e-mail, was described in the report as:

> My response (which he did not like): JUST DO YOURWORK!! Do what you are supposed to do and stop make (sic) excuses and demanding explanations of why you can't do whatever you want to do whenever you want to do it!! JUST DO YOUR WORK!!
>
> I added that it didn't matter why he was being kicked out of class, asked to leave class, escorted to the office, spending time in ISS or at the north office conference table! What mattered was that if he was doing his work and getting the grades, he wouldn't be sent out of class. JUST DO YOUR WORK!!! If you make the grades and you do your work, teachers won't even look at you!
>
> I must have yelled that phrase a time…or 10…in the hallway.

With this documented evidence, the Committee finds that that the IEP accommodation to allow the student to go to a preferred staff member for assistance in calming was not provided on this specific occasion. Accordingly, the Committee reverses the complaint report on this issue, and concludes that there was a violation of the special education requirement to provide services in conformity with the IEP (34 C.F.R. 300.17).

APPEAL ISSUE 3:

Appeal Issue 3 relates to issue 5 in the complaint report (and issue 9 in the original complaint). In this issue, the parents assert that when the district put the student on inactive status on the district's electronic student information system, it effectively withdrew the student from special education, and did so without prior written notice and without parent consent. The conclusion in the complaint report was that, although this student has not attended school in the district since February 9, 2017, the student was not withdrawn from special education. The Committee agrees with the findings and conclusion in the complaint report. Putting the student on inactive status in a student information system is not withdrawal from eligibility for special education services and is not an action that requires a prior written notice or parent consent. The evidence presented documents that at all times the student remained eligible for special education services and that the district had communicated that to the parent, including that the district stood ready, willing, and able to provide the services in the student's IEP should he return to school. The report is sustained on this issue.

APPEAL ISSUE 4:

Appeal Issue 4 appears to relate to Issue 3 in the original complaint and to Issue 6 in the complaint report. Issue 3 in the original complaint is: "School staff made a pre-determination to refuse assistive technology services and refuse behavior intervention

plan to the IEP." Issue 6 in the complaint report is stated as a failure to provide a free appropriate public education (FAPE). The complaint report concludes that the IEP team considered the needs of the student and properly determined that a behavior intervention plan was not necessary. However, the complaint report does not address the parent's allegation that the refusal to provide assistive technology services and a behavior intervention plan was pre-determined before the team made its final decision.

In support of their allegation that the refusal for these proposed IEP provisions was pre-determined, the parents stated in their original complaint that a Multi-disciplinary Team Report included a child study team (which apparently consisted of at least some members of the student's IEP team) recommendation stating that the student did not qualify for assistive technology or for a behavior intervention plan. The Committee notes that IEP teams often receive recommendations from outside sources. When this happens, the IEP team is required by law to consider the recommendations it receives. Accordingly, when considering outside recommendations, the team is complying with law, not violating law. The Committee sees no factual basis in the parents' original complaint to substantiate that the decision to deny assistive technology services and/or a behavior intervention plan was pre-determined before the IEP meeting. However, because the investigator did not address the parents' allegation that the decision to deny these services was pre-determined, the Committee has concluded that the relief requested by the parents in their appeal should be granted. Therefore, Issue 6 in the complaint report is removed, and the findings and conclusion in that issue are nullified. The parents may file another complaint on the issue of whether the denial of these services was pre-determined by submitting another complaint and include the facts which they believe support the allegation.

APPEAL ISSUE 5:

Appeal Issue 5 relates to Issue 7 in the complaint report, and Issue 1 in the original complaint. In Issue 1 of the original complaint, the parents' allege that the district failed to provide a prior written notice and obtain parent consent to conduct a functional behavioral assessment and an assistive technology assessment, as required by the Kansas State Department of Education as a corrective action in a complaint report dated 9/2/16. On page 18 of the current complaint report, the investigator notes that the corrective action in the 9/2/16 report required the district to complete the assessments, and that the corrective action did not require notice or consent because notice and consent for these assessments had already been provided. Moreover, in complaint No. 18FC___-001, another complaint report was issued on 9/11/17. On page 6 of this report, the investigator made a specific conclusion, stating: "Documentation and interview found the FBA and ATA were completed following the appropriate procedures and within the timeline due to an acceptable extension. Based on the foregoing, the allegation of a violation of special education laws and regulations on this issue is not substantiated." The Committee agrees with these conclusions. The Committee also notes that it no longer has jurisdiction to consider this issue on appeal because the time to appeal these conclusions made in previous complaint reports has expired.

CONCLUSION

The investigator's findings and conclusions are modified as follows:

Issue 2 in the complaint report is reversed. The Committee has concluded that the accommodation to assist the student in calming, specified in the IEP, was not provided, and, therefore, a violation of special education requirements has been substantiated. Additional corrective action is needed to address this violation. The district is ordered to schedule an IEP team meeting for the purpose of adding specific interventions to the IEP that will be used by preferred staff members to assist this student to become calm when he comes to them for this kind of assistance. Although the district is not ordinarily required by law to obtain parent consent for this kind of change to an IEP, the Committee is requiring parent consent for this change. Therefore, the district is directed to schedule an IEP team meeting to propose specific interventions which must be used by preferred staff members to assist this student when he comes to them to become calm. The proposal of the team shall be specified on a prior written notice and the district shall request consent from the parents. The parents have the option to consent to all of the proposed interventions, a portion of the proposed interventions, or to none of them. The district must schedule this meeting within five school days of receipt of this decision, to be held on a date that is mutually agreeable to both parties. Within three business days of the meeting, the district shall submit to Early Childhood, Special Education and Title Services a statement verifying that the meeting was conducted, the outcome of the meeting, and provide any supporting documents, such as the prior written notice and consent documents.

Issue 4 in the report is removed and nullified. The parents may file another complaint presenting the issue of whether school staff pre-determined the refusal to put assistive technology services and a behavior intervention plan in the IEP, and providing the factual basis for that allegation.

All other findings and conclusions in the original report are sustained. All corrective actions in the original report remain, as stated, and no extension of time is granted as a result of this appeal.

This is the final decision on this matter, there is no further appeal. This Final Report is issued this 18th day of December, 2017.

APPEAL COMMITTEE:

Colleen Riley Laura Jurgensen

Stacie Martin

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
SHAWNEE MISSION SCHOOL DISTRICT #512
ON NOVEMBER 6, 2017

DATE OF REPORT: DECEMBER 22, 2017

This report is in response to a complaint filed with our office by Liz Meitl. For the remainder of this report, Ms. Meitl will be referred to as "the complainant."

Investigation of Complaint

On November 14 and 21, 2017, Diana Durkin, Complaint Investigator, spoke by telephone with the complainant. On November 14and 29, and December 1, 4, 7, 8, 11, 12, 13, and 14, 2017, the investigator spoke by telephone with Jackie Chatman Director of Special Education for the Shawnee Mission School District. The investigator met with the Director on November 27, 2017, at the district's Center for Academic Achievement.

In the course of this investigation, the investigator asked the complainant to provide specific examples/contacts for each of the allegations outlined in the complaint. Between November 16 and December 14, 2017, the investigator reached out by telephone or email to thirteen current or former district employees. Each of these individuals had been identified during the course of the investigation as having some knowledge of situations related to issues identified in this complaint. Eight agreed to speak by telephone with the investigator; five did not respond. All those who did speak with the investigator requested that their names not be included in this report.

On November 30, 2017, the investigator spoke by telephone with the NEA (National Education Association) President for the Shawnee Mission School District.

Between November 30 and December 12, 2017, the investigator spoke by telephone with principals from ten district schools; each of these schools had been identified as being associated in some way with issues raised in this complaint.

On December 4, 2017, the investigator met with each of the high school level teachers of the Gifted for the district at their assigned building.

During the course of this investigation, the investigator received technical assistance from staff at the Kansas State Department of Education including the following:

1) Mason Vosburgh, Special Education Data Manager
2) Evelyn Alden, Research Analyst
3) Sarah Vanderpool, Data Compliance Officer/State E-Rate Coordinator
4) Susan Helbert, Interim Director of Teacher Licensure and Accreditation
5) Lori Adams, Educational Program Consultant in the Department of Teacher Licensure and Accreditation

In total, the investigator spent more than 40 hours in individual discussions/interviews – either by telephone or in person – gathering information regarding the issues specified in this complaint.

In completing this investigation, the complaint investigator reviewed the following material:

- Shawnee Mission 2017-18 School Year Calendar
- Every Student Succeeds Act of 2015
- Job Description for district Behavior Support Teachers
- Kansas State Department of Education December 2016 student count
- Discipline Data – Incident Counts 2014-15 and 2015-16 for the district
- Caseload reports for the 2017-18 school year for district Art and Music Therapists and Adaptive PE specialist
- Work schedule for Music Therapist
- Work schedule for Adaptive Physical Education teacher
- District Move-in IEP Process
- Gifted Evaluation Process form
- Gifted Evaluation Summary form

Additionally, the investigator spent nearly 70 hours researching and analyzing data related to special education service provision in the district.

Background Information

The Shawnee Mission School District is located in suburban northeast Johnson County, Kansas, 10 miles from downtown Kansas City, Missouri. It is the third largest school district in the state of Kansas. As of the 2016-17 school year, approximately 27,520 students attended 33 elementary schools, five middle schools, and five high schools. Special education services are provided to approximately 2,650 students with disabilities and over 1,050 students who have been identified as Gifted.

The complainant is a doctoral student in the Department of Special Education at the University of Kansas in the Policy and Systems Change specialization. She

is the parent of two children who are enrolled in the Shawnee Mission School District. The complainant states that she is an advocate for students, parents and teachers and reports that she filed this complaint in order to bring attention to concerns that have been personally shared with her.

Formal Complaint

Any individual or organization may file a formal complaint if they believe that the school district is not complying with Federal or State laws or regulations relating to special education. The formal complaint must be for a situation that occurred during the past year (K.A.R. 91-40-51(b)(1)). The formal complaint must be in writing and signed by the person or organization making the complaint. The complaint must state that the school is not complying with the requirements of IDEA, the State Special Education for Exceptional Children Act, or the corresponding Federal or State regulations and give the facts upon which the statement is based (K.A.R. 91-40-51(a)).

In her complaint, the complainant specifies two concerns.

Concern #1

Under Concern #1, the complainant contends the following:

> "(T)he services and supports mandated by students' IEPs are not provided in a consistent way or with a high level of fidelity, primarily because of district-level decision-making which has undermined school level professionals' ability to perform their duties."

In support of her contention, the complainant outlines six sub-issues.

Issue A: Students are not being provided with the number of minutes specified in their IEPs because several schools in the district are understaffed.

Federal regulations, at 34 C.F.R. 300.101 require public schools to make a free appropriate public education (FAPE) available to children with disabilities. At 34 C.F.R. 300.17, the regulations define FAPE, in part, as special education and related services provided in conformity with an IEP.

It is the position of the complainant that the district does not have enough special education teachers, paraprofessionals, or specialists to meet the needs of the students with disabilities. The complainant contends that the lack of adequate staffing results in general education teachers not getting the classroom support they require to meet their student's needs, and as a result, students are not getting the instructional and/or behavioral support they should be getting

according to their IEPs. The complainant believes, in short, that the minutes of classroom support dictated by students' IEPs are not being provided.

In the course of the investigation, the investigator was provided with assertions of violations at three specific district schools. The investigator followed up with building principals regarding each of those violations. For purposes of this report, schools have been identified by a number specific to each school. Thus, whenever "School 1" is noted, it will refer to the same school.

School #1

Paraeducator Support

It was alleged that a lack of paraeducator support resulted in a student not receiving the level of general education classroom support called for in his IEP.

According to the principal, one of the four paraeducators assigned to the school resigned on September 18, 2017. An opening was posted, and the position was filled on October 6, 2017. During that same period of time, one of the three remaining building paraeducators missed 8 days of work because of issues related to her mother's health. The building special education team reworked the master schedule to attempt to provide coverage, but between September 18 and October 6, 2017, some students did not receive all the services specified in their IEPs. All services have been delivered since October 6, 2017.

Services to an Individual Student

It was alleged that IEP-specified minutes of special education services were not provided to a student who transitioned from preschool service to Kindergarten at the start of the 2017-18 school year.

According to the principal, the student enrolled in Kindergarten at the school having previously been served under the district's Early Childhood program. The student's IEP had a behavioral goal to address his behavior needs and indicated that the student was to receive 30 minutes per day of special education services in the general education setting. Starting at the beginning of the school year, the resource teacher "pushed into" the classroom (delivered special education services in the general education setting) during snack or check-in periods. The resource teacher also spent the last 10 minutes of the school day with the student as he waited for his parents to arrive. Paraeducator support was provided to the student at lunch and during afternoon recess where he participated in alternative activities for 15 minutes.

On August 15, 2017, the team determined that the student should be reevaluated. It was the thought of the team that a Behavior Intervention Plan might benefit the student.

Beginning on September 14, 2017, the resource teacher's schedule was altered and she no longer went into the Kindergarten classroom. However, paraeducator support continued to be provided for snacks/check-in, lunch, and afternoon recess – meeting the student's IEP requirement for 30 minutes per day of special education services in the general education setting.

On November 13, 2017, a reevaluation meeting was held and a Behavior Intervention Plan was added to the student's IEP. Data was reviewed which showed that there had been significant improvements in the student's classroom behavior, and his service time was reduced from 30 to 20 minutes per day. Currently, the student is getting 2 optional snack breaks a day, and a paraeducator is checking in with the student to review strategies from Zones of Regulation. The resource teacher is now in the classroom from 1:25 PM to 1:45 PM daily. Services to this student have been delivered as dictated by his IEP.

School #2

The building has discovered that 3 students have missed some of the minutes of service outlined in their IEPs. The principal and special education staff are developing a revised schedule that will provide compensatory services to those students beginning in January (while avoiding disruption to services for other students.

School #3

According to the principal, paraeducator absences, which might otherwise have been disruptive to student services, have been covered by scheduling shifts or by pulling together small groups to provide coverage for instruction.

Building-Level Contacts

The investigator also contacted principals from a random selection of additional buildings with regard to whether or not students in their buildings were being provided with the minutes of service specified in those students' IEPs.

The majority of principals contacted stated that their students were receiving the number of minutes of service specified in their IEPS. However, two principals did tell the investigator that not all special education students were receiving the minutes of service called for in their IEPs. Those additional schools are identified below as schools 4 and 5.

School #4

The building principal reported that the building had not anticipated the enrollment of three new special education students when establishing staffing needs for the 2017-18 school year. The Special Education Coordinator assigned

to the building worked closely with the principal and Director to determine needs and to open paraeducator positions once those needs were established. An additional paraeducator was assigned to the building the second week of the school year, and another paraeducator was added the second week of October. Some service minutes were missed.

School #5

The building principal stated that not all minutes of service specified in student IEPs were being provided. According to the principal, the safety issues associated with the behavior of a single student often resulted in staff being pulled away to assist with the management of that student. Minutes of service missed because of this redirection of staff have not, according to the principal, ever been made up.

Unfilled Certified Positions

As of December 1, 2017, there were 7 unfilled certified positions in the district. According to the Director of Special Education, some of the positions were filled between December 1 and December 12, 2017. The listing of both Certified and Classified vacancies included in this report should be considered a “snapshot” of vacancies at a single point in time and is not represented as correct at the time the report is issued.

A vacancy for an Art Therapist (resulting from the resignation of the former Art Therapist in September 2017) was filled on December 4, 2017. Compensatory services for those students whose services were missed because of that resignation have already begun to be provided.

A new self-contained position was opened in November to address high caseload issues in two other classrooms. Those caseloads will be reduced when the new teacher begins work on January 3, 2018. All students have been served by existing staff.

An elementary resource vacancy at one elementary school resulted from the resignation after Thanksgiving of an employee who had been on medical leave. That position had been covered by a long-term substitute and, beginning January 3, 2018, it will be filled by a newly hired certified teacher. During the first semester, support was provided to the substitute so that services were provided to all students.

A second resource vacancy (at the high school level) has been unfilled since the start of the school year but covered by a long-term substitute. That position has been filled. That new teacher will begin January 2, 2018. Services to students were overseen by existing building special education staff during the first semester.

There is a vacancy for an Autism Coach. That vacancy was opened at the start of the school year. Current Autism Coaches are continuing to provide services to students until the position is filled.

Currently employed School Psychologists are providing coverage for this district-level position. No students have gone unserved.

The vacancy for a high school-level self-contained classroom has been covered by a long-term substitute who is in the process of obtaining special education certification. Other special education teachers are also providing support in the management of that caseload. Services have been provided for all students as specified in their IEPs.

Unfilled Classified Positions

As of December 1, 2017, 17 classified positions remained unfilled. According to the Director of Special Education, the listing of classified vacancies changes almost daily. Some of these vacancies have been unfilled since the start of the school year, and some have resulted from resignations after the start of the school year. Vacancies are posted as soon as possible after a resignation is received.

A COTA (Certified Occupational Therapy Assistant) position has been posted to help with caseloads. No current student service minutes were associated with this position.

A vacancy has been posted for an additional paraeducator position at the therapeutic day school. Current staff is providing coverage for all service minutes.

Vacancies are posted for resource paraeducator positions at 7 elementary schools and one high school. Current staff are providing service coverage.

Two vacancies are posted for SLC (Structured Language/Learning Classroom) positions, 2 ALC (Active Learning Classroom) positions, 1 self-contained BD (Behavior Disorders) position, 1 Early Childhood program, and 1 post-high self-contained classroom.

In general, a substitute is employed whenever an opening arises in a self-contained program, and a vacancy is posted. For other paraprofessional vacancies, adjustments are made in staff schedules to provide continued support to students, or additional service is provided in a resource room.

Currently the district has 4 substitute paras. In those self-contained classrooms where substitute paraeducator are not in place, existing staff is addressing the needs of students.

Summary and Findings Regarding Issue A

Interviews with building principals confirmed that not all of the special education services specified in their students' IEPs have been provided. All of the missed services reported to the investigator resulted from situations involving either

a) the transfer of a new special education student into the building,
b) the absence or resignation of a paraeducator,
c) scheduling errors, or
d) the unanticipated behavioral/safety demands of a single student.

No service provision failure was attributed by any of the principals interviewed to a lack of certified special education staff. Some buildings have already developed plans for the provision of compensatory services to identified students.

Because some students in the district have not been provided with the number of minutes of special education service specified in their IEPs, a violation of special education laws and regulations is substantiated on this issue.

Additional Comments

The management of personnel in a district the size of this one poses a significant challenge to any building-level or district administrator. Changes in staff have – along with the ebb and flow of the student population – resulted in some service minutes not being provided to students. However, the investigator was provided with no evidence to suggest any district-level policy or practice resulted in service minutes to be missed.

Issue B: Students in several elementary schools did not receive any of the support services mandated by their IEPs for the first three to four weeks of school during the 2017-2018 school year.

Districts are required to ensure that an IEP or IFSP is in effect at the beginning of each school year for each child with an exceptionality (K.S.A. 72-987(a)(1); K.A.R. 91-40- 8(h)(i); K.A.R. 91-40-16(b)(1)(2)(3); K.A.R. 91-40-16(c); 34 C.F.R. 300.323(a)(c)).

The complainant asserts that students in the majority of the district's elementary schools did not receive services until three to four weeks into the 2017-18 school year.

The district established a start day for gifted services at the elementary level of August 22, 2017 – 8 school days after all students in grades 1-6 had begun attending school. Parents were notified of that start date prior to the first day of school, but the delayed start date is not reflected in students' IEPs. The rationale

expressed by the district for the delayed start is that the students needed to become familiar with the routines of their home schools before leaving one day a week to attend the gifted center (where all elementary gifted services are provided). The district reports that no feedback was received from parents complaining about the delayed start date.

According to the Director of Special Education, it is the policy of the department that all students with disabilities who have active IEPs at the start of the school year should begin receiving services on the first day of the school year.

In order to determine whether the established policy is being followed, the district conducted its own investigation into this issue. A survey was sent to special education personnel providing direct services to students at the elementary level (special education teachers, Speech/Language Pathologists, Music Therapist, Adaptive PE Specialist, Physical Therapists, and Occupational Therapists). Responses were provided by a total of 235 staff members.

Data was collected on the following questions:

1. Did you know your caseload prior to the first day of school in August?
2. What date did you begin providing special education services to students?
3. What date were you able to implement pull-out services to all students as listed on their IEP?
4. What date did you begin providing push-in services to students?

Question 1

Eight percent of respondents indicated that they did not know their caseload prior to the first day of school.

Question 2

The first day of school for grades 1- 6 was August 11, 2017. The first day of school for Kindergartners was August 15, 2017. Fifty-three percent of respondents indicated they began serving students on August 11th. Twenty-nine providers indicated that they began serving students on August 14th. Six percent reported that they began serving students on August 15th. Five percent of respondents began service on August 16th. Three percent started serving students on August 21st, and one provider did not begin serving students until October 9, 2017 because she had been out on medical leave.

Question 3

Twenty-eight percent of respondents do not provide any pull-out services. Thirteen percent of respondents stated that they were providing pull out services to all students as shown on those students' IEPs as of the first day of school.

Twenty-four percent of respondents were providing pull-out services to all students whose IEPs dictated those services by August 14th. Five percent were providing services by August 15th, and six percent by August 16th. Two percent were providing all required pull-out services by August 17th and three percent by August 18th. Eight and one half percent pull-out services in place by August 21st and four percent by August 22nd. Three individuals (1%) did not have services in place until August 24th; four (2%) had services in place by August 28th. Four individuals (2%) were not providing required pull-out services to all students until August 31st or later (one because of medical leave as mentioned above).

Question 4

Thirty-five percent of respondents reported that they initiated push-in services to students on August 11th. Twenty-eight percent reported that these services were started on August 14th. Five percent more had started push-in services by August 15th, and an additional five percent had begun those services by August 16th. Three individuals (1%) started push in support on August 17th, two began on August 18th, and three additional staff members had started push-in by August 22nd. One provider did not initiate push-in services until September 5th, one on September 11th, and one on September 21st (a total of less than 1%). Nineteen percent of respondents indicated they do not provide any push-in services.

The district followed up with each special educator who had reported a delay in implementing either pull-out or push-in services beyond August 17, 2107.

From that follow-up, it was determined that some related service providers (Speech/Language Pathologists, Occupational Therapists, and Physical Therapists) did not initiate pull-out services until the start of the second full week of school. Some reported delaying pull-out service while pushing into classrooms while classroom routines were being established. Others reported delaying pull-out services while waiting for building-level master schedules to be finalized. In some cases, students enrolled in private schools were not yet attending school, so there was no way for service to be provided. Some Occupational and Physical Therapists spent the opening days of the school year delivering and setting up adaptive equipment before starting to deliver services. In two cases, the needs of a single move-in student consumed the focus of the service provider and resulted in a delay in services to other students in order to ensure a safe school environment. In one of those two cases, services were not provided to all students until September 5, 2017, more than 3 weeks after the start of the school year.

In addition to the efforts of the district, the investigator contacted the principals of three elementary schools identified by the complainant as having had service delays at the beginning of the 2017-18 school year. The principals of two other buildings (randomly selected) were also contacted by the investigator. These five principals stated that master schedule adjustments at the beginning of the

school year may have resulted in some students receiving less than the amount of special education service specified in their IEPs during the first two weeks of the 2017-18 school year. None of the principals contacted with regard to beginning-of-the-year service minute issues reported delays of more than two weeks.

One of the individuals contacted by the investigator at the suggestion of the complainant reported that she had been serving as an advocate for a parent at a meeting in the Fall of 2017. By report of the advocate, a number of service providers at the meeting confirmed that they had not provided any services to the student until September 15th, well after the start of the school year.

The investigator followed up with the principal of the school where this meeting was held. According to the principal, the services being discussed at the meeting were not special education services and therefore are unrelated to this issue.

Summary and Findings Regarding Issue B

Survey results indicate that pull-out services were being provided to most students beginning on the first day of the school year – either August 11 or August 15 (depending upon the grade level of the student). Delays of one week or less often were the result of scheduling adjustments or equipment delivery. Some providers went into classrooms while classroom routines were being established, and in some cases, private schools did not open on the same schedule as the public schools.

In two cases, the majority of a service provider's caseload was delayed because of the need to focus attention on a single high needs student. In one of those cases, not all students were receiving service until the third week of the school year.

Because not all services were provided to all students on the first day of the 2017-18 school year as specified in those students' IEPs, a violation of special education laws and regulations is substantiated on this issue.

Additional Comments

According to the complainant, she has spoken with district employees who admitted to her that they did not respond truthfully when asked to provide information requested by the district in conjunction with this survey.

Findings related to this issue are based upon survey results collected through what the investigator believes to be a good faith effort on the part of the district to collect accurate data. This investigator does not have the power to compel any individual to provide evidence with regard to this investigation. No one is asked, or required, to provide testimony under oath.

Further, if respondents indicated that they lied when responding to the survey, their caution in responding suggests that they were aware of district expectations regarding the prompt initiation of services to students at the start of any school year.

The district can only be expected to attend to or to make changes related to issues of which they have been made aware and which can be substantiated through objective investigation. Any dishonesty on the part of survey respondents interferes with that process.

Issue C: Secondary students in the therapeutic day program are not receiving subject-specific instruction from highly qualified teachers who are certified in the subject area.

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).

The term “highly qualified” is no longer a requirement of special education law. That requirement was removed by the Every Student Succeeds Act of 2015. At this point, districts are required to confirm that a teacher has state certification.

According to the complainant, students at the district’s therapeutic day school receive all their instruction from special education teachers. The complainant asserts that positions for English and Math teachers are still being advertised and had not been filled at any time between the start of the school year and the time of the filing of this complaint. It is the position of the complainant that because of these vacancies, students at the day school are unable to earn credit toward graduation and have little hope of graduating on time, if at all.

The complainant further asserts that an Art Therapist, Music Therapist, and Adaptive PE Teacher have been assigned to teach courses for which they are not trained or certified.

The district concurs that the Math and ELA (English Language Arts) positions are still open, posted positions. According to the Director of Special Education, it is the goal of the district to work with current building staff to become licensed to teach in content areas unless these positions are filled by individuals with appropriate certification. In the interim, licensed special education teachers are providing instruction in these areas with the support and under the supervision of licensed content teachers from another building – as is allowed by Kansas

Department of Education guidelines. Biweekly telephone conferences are held to facilitate collaboration. Face-to-face meetings can be arranged as needed.

All but one of the special education teachers at the day school are appropriately certified. However, one special education teacher at the school lacks the appropriate special education licensure for the grade level she is teaching. That teacher holds Kansas Adaptive K-6 certification; the teacher is responsible for students in grades 9-11.

The district reports that the teacher in question has agreed to work toward obtaining the appropriate license for her position. She has enrolled in a university program. Once the course of study has been received, the district will seek a waiver for her from KSDE.

A licensed Music Therapist is providing music therapy to all students in the school in small groups. A certified Health and PE teacher provides instruction to students in that area as does the district's Adaptive PE teacher who holds a Kansas PE license.

Art instruction was to be provided by the district's Art Therapist but that individual officially resigned from the district on September 14, 2017 having taken 2 weeks of vacation prior to his resignation. Based upon information provided by the principal of the day school, the Art Therapist provided only one day of service to students at the school before his resignation.

A part-time Art Therapist has been employed by the district and began providing art instruction to day school students on December 4, 2017.

Graduation Credit

The awarding of credit for classwork is a district decision. All of the students at the therapeutic day school are earning credit that will allow them to graduate.

Summary and Findings Regarding Issue C

Students at the district's therapeutic day school are earning course credit that will allow them to receive a high school diploma. General education teachers who hold appropriate subject matter credentials are awarding grades.

One special education teacher at the Therapeutic Day School is not appropriately licensed for the position in which she is employed. That teacher is licensed in Kansas to work only with students with adaptive needs at grade levels of K-6 but all of the students at the school are enrolled in grades 7-12. Under these circumstances, a violation of special education laws and regulations has been identified.

<u>Issue D:</u> Some staff who are identified as behavioral specialists do not have the appropriate degrees/training to support their work in those positions.

As stated above under Issue C, districts 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 (34 C.F.R. 300.156; 34 C.F.R. 300.207).

The complainant contends that a restructuring of behavioral support positions in the district two years ago resulted in the resignation of a number of Behavior Specialists. It is the assertion of the complainant that some of the individuals hired to fill newly defined behavior specialist vacancies have not been adequately trained.

The Kansas State Department of Education has established requirements for "Behavior Specialists" for districts to use when preparing claims for state special education support known as Categorical Aid. As stated in the Special Education Reimbursement Guide State Categorical Aid for the 2017-18 school year, a "Behavior Specialist" must have

> "Certification as a Board-Certified Behavior Analyst (BCBA or BCBA-D) from the Behavior Analyst Certification Board (BACB) or licensed as a Behavior Analyst (BA) or a Psychologist (LP) by the Behavior Sciences Regulatory Board (K.S.A. 65-7503(1) and K.S.A.65-7503(4)0."

The district confirms that positions were restructured in August of 2016. The district no longer employs any individual with the job title of "Behavior Specialist." Instead, "Behavior Support Teacher" (BST) positions were created in the restructuring process with the intent of providing a greater level of services to students both inside and outside of special education. According to the district, Behavior Support Teachers serve as consultants and support staff and provide no direct service to any student. The intent of the change was to focus attention on training staff in the implementation of student plans that could be sustained once BST intervention was phased out.

Currently, the district employs 11 Behavior Support Teachers. According to a district-provided job description, the duties and responsibilities of a Behavior Support Teacher are as follows:

> "…assist individuals, groups, and systems through the implementation of positive behavior supports. The individual hired will work collaboratively with school teams to execute effective behavior instruction, functional assessments of behavior, and the implementation of behavior plans to support school teams in creating positive outcomes for all students."

Again, as stated in the job description, individuals filling the role of Behavior Support Teacher are expected to be able to perform the following duties:

- "Expert knowledge in research based instructional strategies and ability to implement them effectively
- Ability to use and model research based classroom management and individualized behavior interventions
- Work effectively with staff to develop an on-going problem solving process to address behavioral concerns
- Assist staff in identifying specific behavior or social skills to be improved
- Assist educational teams in making modification in programming to support positive behavior outcomes for all students
- Provide resources and training on positive behavioral strategies
- Ability to help school teams create data collection systems to aid in determining the function(s) of target behaviors
- Promote the continuous use of student data to inform and differentiate social/emotional instruction
- Ability to organize, prioritize and manage work assignments in an efficient manner and within established timeframes"

Additionally, the job description states that Behavior Support Teachers are expected to have the following skills and abilities:

- Ability to apply knowledge of current research as a base to develop behavioral instruction
- Possess knowledge and skill to work with adult learners for the purpose of training
- Knowledge of the philosophical base of positive behavior supports
- Engage in on-going professional development to increase knowledge and skills of positive student behavior support
- Knowledge of the special education evaluation process and IEP development
- Knowledge of Kansas Emergency Safety Intervention requirements

The job description does not indicate that applicants for the position of Behavior Support Teacher be a "Behavior Specialist" as defined by the Reimbursement Guide nor are applicants required to hold licensure or certification as a "Behavior Analyst."

Of the 11 currently employed Behavior Support Teachers, all hold Master's Degrees (4 in the area of Special Education, a fifth in the area of Special Education with emphasis on Autism). One holds a Master's Degree in Psychology with an emphasis on Applied Behavior Analysis. Two others hold Master's Degrees in Applied Behavior Analysis. Six of the Behavior Support Teachers are licensed/certified Behavior Analysts; two others are working to complete Behavior Analyst certification.

Levels of experience working in the field of behavior range from 5 to 22 years. Eight Behavior Support Teachers have 8 or more years of experience working in the behavior field; one has six years of experience; two others have worked in the field for 5 to 5.5 years.

Those individuals who are professionally licensed as a Board-Certified Behavior Analyst are claimed by the district for reimbursement under the title of Behavior Specialist. The remaining Behavior Support Teachers are claimed for reimbursement purposes as Special Education Teachers.

Discipline issues

The complainant alleges that the district has "terrible discipline problems" which she believes are "directly related to (the district's alleged) behavior expertise vacuum."

No objective data was available for evaluating the relationship between the establishment of the Behavior Support Teacher positions and the number of disciplinary incidents. Anecdotally, none of the individuals interviewed by the investigator (current and former employees, general and special educators, or administrators) agreed with the complainant's contention that any such relationship exists. Instead, several noted that "changing demographics" and/or an increase in the number of "students with trauma" were causative factors in changes in the number or type of behavioral incidents seen in the district.

Principal Feedback

In order to get a sense of the effectiveness of the district's current Behavior Support Teachers, the investigator contacted a sample of 8 district building principals by telephone. Additional written comments were provided by 5 other principals. Some of these principals currently are working with Behavior Support Teachers, who have Behavior Specialist credentials. Some work with Behavior Support Teachers who are certified as Special Education Teachers. A sample of comments made by principals follows:

- "The guidance and support provided to our school by (our) Behavior Support Teachers has been extremely helpful and has allowed us to meet the needs of multiple students. Their ability to support as needed, and for the duration needed based on student behaviors, has been an effective model for our school."
- "(Our Behavior Support Teacher) supports our students and teachers at every level and possible way needed for the situation…"
- "Our discipline numbers are down as compared to this time last year and a number of teachers that have worked with (our Behavior Support Teacher) have commented that they have more ideas and/or tools in their toolbox as they work with students in their classroom."

- "(Our Behavior Support Teacher) has made a tremendous impact on our building and is a huge benefit to our improvement process…"
- "It is hard to put into words the positive effect (our Behavior Support Teacher) has had on our school…She is an excellent resource for our special education students…and for our students who struggle with behavior and aren't identified as special education. (She) is a high-quality individual that brings effective ideas an strategies to our teachers."

No negative comments were received.

None of the principals interviewed by the investigator believed that there was any direct correlation between the district's transition to "Behavior Support Teachers" and any increase in discipline problems. According to all principals interviewed by the investigator, district Behavior Support Teachers have worked conscientiously to help buildings mitigate the impact of that "trauma." None of the interviewees commented on a lack of skills or training on the part of the BSTs serving their buildings.

Summary and Findings Related to Issue D

There is no requirement in federal or state laws or regulations regarding the employment of "Behavior Specialists." Federal regulations only require that districts confirm that personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained and, as appropriate, have the content knowledge and skills to serve children with exceptionalities. Nothing in the law restricts a district's ability to define qualifications for a given job position.

All of the individuals hired to fill Behavior Support Teacher positions in the district have Master's level training, and meet requirements established by the State of Kansas with regard to certification and licensure. The majority have 8 or more years of experience in the field of behavior. Feedback provided by principals in the district was consistently positive with regard to the effectiveness of currently employed Behavior Support Teachers. No evidence was presented to support the contention that disciplinary problems in the district have escalated as a result of the district's establishment of the Behavior Support Teacher positions**.**

A violation of special education laws and regulations is not substantiated on this aspect of this issue.

Issue E: Students who transfer into the district often experience a significant lag between their first day in Shawnee Mission School District and the onset of services.

When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child's records, including the IEP and

supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district in which the child was enrolled. The previous school district in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school district (K.S.A. 72-987(g); 34 C.F.R. 300.323(e)(f)(g)). Parent consent is not required to transfer education records to a school where a student intends to enroll, or is already enrolled, if the sending school's annual FERPA notice states that the school forwards education records to schools that have requested the records and in which the student seeks, or intends, to enroll, or is already enrolled (34 C.F.R. 99.31 (a)(2)).

When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous school district. Once the new district receives the current IEP the new school district may adopt the child's IEP from the previous school district or develop and implement a new IEP. If the new district develops a new IEP, parent consent is required for any substantial change in placement or any material change in services proposed in the new IEP (K.S.A. 72-988(b)(6)). When a student moves within the State, eligibility has already been established and a reevaluation is not required.

When a child with an exceptionality, who has a current IEP in another State, transfers to a school district in Kansas, the new school district, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous school district until the Kansas school district either adopts the current IEP, or conducts an initial evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child.

The district enrollment form for each student asks whether or not the student has been receiving special education services. If a completed enrollment form indicates a student has been receiving services, the district implements a process for the management of service. Providers are directed to begin implementing comparable services/minutes as shown in the incoming IEP. Meetings are scheduled to answer parent questions and complete all necessary documentation. Services may be implemented as they are shown in the IEP from the sending district, or an IEP Team may opt to develop a new Shawnee Mission IEP.

The complainant maintains that delays in service implementation occur in all district buildings. In particular, she pointed to recent transfers at four elementary schools and two middle schools in the district.

The investigator contacted the principal of each building to discuss the complainant's allegation.

School #1

The investigator contacted the building principal by telephone to discuss a recent transfer of a student to the building.

The student transferred to the building from another Kansas school district on August 18, 2017. According to the principal, the building was told by the parent that the student had been in special education. When the student's IEP had not been received from the former district by the next week, the resource teacher contacted the student's former school and determined what services the student was to receive. Those services were implemented the following day. The meeting with the parent to discuss services was difficult to schedule, so that meeting was not held until more than 10 days after the student's enrollment. Services were, however, implemented in a timely manner.

A violation of special education laws and regulations is not substantiated on this aspect of this issue.

School #5

The principal was unaware of any delays in the provision of services to any student who has transferred into the building between November of 2016 and November of 2017.

Enrollment records show that no special education student transferred into this school between November 1, 2016 and November 6, 2017.

School #6

According to the building principal, the student referenced by the complainant enrolled in the school on Thursday, October 5, 2017. The student had been previously enrolled in a private program in another state. On October 5, 2017, the school's reading specialist began working with the student to determine areas of needed support. A paraeducator was already in the student's classroom and provided support to this student and others. On October 6, 2017, the special education Resource Teacher for the building went to the student's class to conduct an observation and collect data. On October 11, 2017, the student's previous IEP was received. An observation was conducted by an Autism specialist on October 12, 2017 who then provided intervention ideas for the team. Speech/Language services were initiated on October 13, 2017, and the Resource Teacher began providing services to address reading, behavior, and social goals on October 16, 2017 – 7 school days after the student enrolled in the

district and on the third school day after the student's IEP was received. An IEP Team was convened with the parents in attendance on October 19, 2017.

In-class support for this student was increased on November 2, 2017 utilizing an educational aide trained by the special education teacher and the Autism specialist. A Paraprofessional position was opened, interviews were held, and a recommendation for hiring made. The new Paraeducator will start on December 13, 2017.

Notably, the legal requirement to provide comparable services to a transfer student does not address the issue of when these comparable services must begin. The Kansas Supreme Court has said that when a statute requires and action but does not specify a particular time, the act should be accomplished within a **reasonable time**. The court added that what constitutes a reasonable time is a matter to be determined under the circumstances in each particular case. See: Don Conroy contractor, Inc. v. Jensen, 192 Kan. 300 302 (1963). Moreover, the Office of Special Education Programs (OSEP) has stated that schools must take reasonable steps to obtain education records of transfer students from previous school districts, but if it is not able to do so, it is not required to provide special education and related services to that child. See: Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations, 111 LRP 63322 (OSEP 2011).

In the opinion of the investigator, a 7-school day delay in the provision of services to a student entering the district from out of state (3 school days following the receipt of the student's previous out of state IEP) is not unreasonable.

A violation of special education laws and regulations is not substantiated on this aspect of this issue.

School #7

The principal was unaware of any problems regarding the prompt provision of service to any student who had transferred into the school in the one-year period prior to November 6, 2017.

Enrollment records confirm that no special education student transferred into this school between November 1, 2016 and November 6, 2017.

School #8

The principal stated that building staff have a clear understanding of the importance of promptly getting transfer students into service if they have an active IEP. According to the principal, delays have occurred only when parents have not informed the school that the student had an IEP or if the building is unable to obtain the student's IEP or any information regarding services.

Enrollment records show that only one special education student moved into this building between November 1, 2016 and November 2017. That student began receiving services upon enrollment.

School #9

The principal stated that everyone at the building is very aware of the district's policy regarding transfer IEPs. The principal could not recall any instance when services were not provided promptly unless the school had been given no information by either parents or the previous school district that the student had an IEP.

Records show that only one special education student transferred into this building between November 1, 2016 and November 7, 2017. There is no indication that the implementation of services to that student was delayed.

Internal Audit

In response to this complaint, the district conducted its own internal audit regarding services to transfer students at all grade levels and in all schools. The district first looked at any special education student who had transferred into the district between November 1, 2016 and November 6, 2017. Staff reviewed each student's enrollment date and each student's IEP to determine when services were initiated.

More in depth analysis was conducted on any student whose Shawnee Mission IEP initiation date was greater than 10 days after their enrollment date. When a delay of more than 10 days was found, administrative staff contacted the School Psychologist for the student's building of enrollment or the student's case manager.

Fifty-four elementary level special education students transferred into the district between November 1, 2016 and November 6, 2017. The majority of these students began receiving service within two days or less of enrollment. Delays of more than 5 days were related to difficulty in obtaining confirmation of services or a copy of the previous IEP for the student or to the failure of parents to inform the building at the time of enrollment that the student had previously been receiving special education services.

Eleven middle school special education students transferred into the district during the targeted period. Comparable services were promptly provided to 8 of these students. When enrolling two students, parents did not indicate that these students had been receiving special education services. Comparable services were provided to these students the day after the district received their IEPs

Thirteen high school level special education students transferred into the district between November 1, 2016 and November 6, 2017. All of those students were receiving services comparable to those listed in their IEPs within one day of their enrollment except one. One student enrolled on August 11, 2017 but the IEP for that student was not received by the district until September 15, 2017. Comparable services were provided beginning on that date.

Summary and Findings Regarding Issue E

The investigator's interviews with principals confirmed that building teams are well aware of the necessity to quickly move special education transfer students into comparable services and reflected a clear understanding of the district process for implementing services to these students.

Interviews by the investigator and an in-house audit by district staff show that the district has consistently taken reasonable steps to obtain special education records of transfer students and to provide services to those students comparable to those outlined in the IEP from the previous district unless or until a new IEP is written. Delays in obtaining records from previous districts or difficulties in scheduling meetings with parents have sometimes resulted in implementation delays, but, during the period of November 1, 2016 and November 6, 2017, the majority of students received comparable services within less than two days.

Longer delays did result when parents had not informed the district that a student had been receiving special education services in a previous district or when, despite the best efforts of staff, sending district IEPs could not be obtained or services could not be confirmed.

A violation of special education laws and regulations is not substantiated on this issue.

Issue F: High school special education teachers who are assigned to work with gifted students have unmanageably large caseloads, and as a result the students are not receiving appropriate services.

It is the position of the complainant that high school gifted teachers spend an inordinate amount of time managing a paperwork burden and are therefore prevented from focusing on students' IEP goals and providing the enrichment activities their students need.

The complainant further contends that teachers have received inadequate information regarding such issues as self-pacing. It is the position of the complainant that because of the introduction of a program called Edgenuity, teachers are not allowed to pre-test or modify instruction for students. Therefore,

according to the complainant, student services regarding self-pacing are not being provided.

Neither federal nor state regulations specify caseload limits for special education service providers. Districts are required to provide a free appropriate public education (FAPE) (34 C.F.R. 300.01). FAPE is defined, in part, as special education and related services provided in conformity with an IEP.

The investigator spoke individually with all 5 of the district's high school Gifted teachers during on-site meetings at four of the district's high schools. The following information was collected during those interviews:

- Caseloads range from 81 to 112 students. (For comparison purposes, the President of the Shawnee Mission NEA states that it is not unusual for an English, math, or science teacher in the district to have a teaching load of 160-180.)
- Caseloads are fairly evenly distributed across grade levels at each school, although there is a slight downward trend in numbers for the freshman class at the majority of buildings.
- The number of students enrolled in a class for Gifted services ranges from 20 to 60 students across the five high schools.
- The majority of students are on 1 year IEPs, but teachers are beginning to write more 3 year IEPs now that the Skyward program allows for it. (Teachers report that the Skyward system introduced this school year was not set up to allow for 3 year IEPs until October of 2017.)
- Peak months for IEP development vary across the district. High IEP load months for some are actually low periods for others. One teacher reports a high of 26 IEPs in a single month, one a high of 25, a third a high of 19, and a fourth reported a high of 14.
- Time spent by teachers for completion of a single IEP (including scheduling, contacting teachers for input on student performance, interviewing students, holding the IEP meeting, and completing all required paperwork) varies from 2.5 to 5 hours with the majority of teachers spending approximately 3 hours on the process. Most teachers feel that they are getting faster in completing the IEP itself as their familiarity with the new IEP program increases.
- The majority of these teachers hold IEP meetings before or after school. Some before-school meetings can run over into the first period and can reduce the amount of special education services students in that first hour receive.
- All of these teachers report having 1 planning period per day. In some cases, teachers are able to use Seminar time to work on IEPs or meet with students who are not enrolled in a Gifted class, but that is not the case for all teachers.

- Some Gifted teachers reported that Seminar periods do not work effectively for student conferencing because of confidentiality issues or because the teacher does not have the flexibility to leave the Seminar setting to conference with students.
- One teacher has been assigned to cover a period when no gifted students are enrolled.
- None of the teachers has any district-assigned paraeducator support to provide assistance with paperwork, but principals at some of the high school have provided minimal building level support.
- It takes teachers from 15-60 minutes per student to complete quarterly monitoring.
- None of the teachers reported that his/her caseload has kept any of the students enrolled in a Gifted class from attaining their IEP goals.
- The majority of teachers did report, however, that they were not providing the minutes of service (generally 15-20 per quarter) specified in students' IEPS if those students were NOT enrolled in a Gifted class.
- Teachers stated that it is difficult to pull students from other classes to accomplish the activities required to complete an IEP or IEP monitoring for a student not enrolled in a Gifted class.
- The majority of teachers reported that rather than seeing students for the 15 or 20 minutes per quarter specified in their IEPs, these students were seen for 5 minutes per quarter. None of the teachers indicated that this reduction in minutes of service was keeping these students from reaching IEP goals.
- The majority of teachers reported that the size of their caseload and its related paperwork demands kept them from providing the quality of instructional support to their students that they want to provide.
- All of these teachers indicated that several of the students on their caseload had goals related to self-paced instruction. The majority of teachers stated that the requirements of the Edgenuity program (that students are required to view videos for instructional units rather than "testing out") is making it more difficult for students to find the time to focus on their other IEP goals.

In short, high school teachers of the Gifted in the district are spending an average of 30 hours per month completing IEPs. Peak IEP development time can reach beyond 75 hours in a given month. That burden can be exacerbated if high IEP load months coincide with quarterly monitoring periods when a teacher may spend in excess of 50 additional hours completing required monitoring paperwork. With a maximum of one planning period per day, it is clear that teachers are having to find additional time either within the school day or beyond to manage basic IEP-related paperwork. All those teachers who were

interviewed stated that they were spending at least some classroom time working on paperwork rather than on providing student instruction.

The majority of those Gifted students who are not enrolled in a Gifted course are by the report of their teachers being provided with fewer minutes of service than is specified in their IEPs (generally 5 rather than 15 or 20 minutes per quarter). The reported reduction in service minutes appears in part to result from a reluctance of Gifted teachers to avoid any detrimental effects from pulling students from another class to talk about their IEPs. Despite the reduction in service time, teachers report that because their students tend to be self-directed and highly motivated, the students are attaining the goals that are set out in their IEPs.

While Gifted teachers report that the introduction of the Edgenuity program has changed the way Gifted students are approaching curricular advancement, it does not appear that those changes have kept students from achieving related goals. No evidence was presented to show that Edgenuity changes have resulted in any failure of Gifted students to meet their other IEP goals though by report of Gifted teachers, students may be decreasing the time they allocate to those other goals in order to spend more time working through Edgenuity requirements.

Summary and Findings Regarding Issue F

High school teachers of the Gifted do have large caseloads. However, teachers are juggling the demands of their jobs and managing those caseloads. Students are attaining IEP goals.

However, many of the district's high school level Gifted students who are not enrolled in Gifted classes are not receiving the 15 to 20 minutes of service per quarter specified in their IEPs. While the reduction in minutes may have in part resulted from teachers' struggles to manage services for many students, some of the reported reductions in service minutes are the result of scheduling issues or a reluctance on the part of teachers of the Gifted to pull students from another class. Regardless of the cause, many students are not receiving the number of minutes of service specified in their IEPs. A violation of special education laws and regulations has been identified.

Additional Comments

The district acknowledges that caseloads for high school gifted teachers are high. According to the Director of Special Education, the district is initiating a number of actions to address the workload of high school gifted teachers. Those include:

- Professional development for both middle school and high school gifted teachers to assist them in learning how to appropriately identify gifted student needs as they develop IEP goals. The number of minutes on the service grid can then be calculated appropriately which will lead to determining the appropriate service (direct or indirect) as outlined on the student's IEP.
- Professional development for middle school and high school gifted teachers on how to manage their caseloads, how they schedule their students, what type of activities should be provided during direct instruction and what type of activities should be provided during indirect services.
- For the 2018-19 school year, gifted high school teachers will provide direct instruction (teach Gifted students) 5 periods of the 7-period school day. One period of the day will be allocated as time for indirect services. One period of the day will be allocated as plan time.
- Beginning the 2018-19 school year, high school gifted teachers will be provided one "sub" day a quarter to provide time for IEP meetings and time to complete IEP paperwork.

It is the observation of this investigator that the reduction in the provision of service minutes for students who are not enrolled in a Gifted class appeared to have no significant impact on the ability of those students to attain their IEP goals. Further, Gifted teachers are spending an average of 3 hours to complete an IEP for each of these students and an additional 15 minutes per quarter to monitor their progress, but only 80 to 120 minutes per year in actual contact with each student.

The investigator acknowledges that it is the responsibility of the IEP Team to determine the needs of each special education student and recognizes that the investigator has no knowledge of those needs, but it would seem incumbent on the district and on IEP teams to carefully consider whether each student who currently has an IEP showing 2 hours or less of Gifted services per year is truly in need of special education instruction.

Summary Related to Concern 1

This district, like many districts across the state and nation, is dealing with a changing demographic at a time when financing and the ability to hire special education staff is especially challenging. Administrators are asked to be fiscally responsible to patrons while ensuring that the needs of students are fully and thoughtfully addressed.

While this investigation has substantiated some specific violations of special education laws and regulations, the investigator did not find any evidence of systemic actions, policy, or practices on the part of the district purposefully

designed to undermine the ability of school-level professionals to perform their duties.

Concern #2

Under Concern #2, the complainant makes the following assertion:

> "The district consistently allocates resources in inequitable ways, advantaging families with more resources and capital (financial, emotional, and social) and disadvantaging families with fewer resources."

In support of this contention, the complainant outlines two sub-issues:

Issue 1: Students with disabilities are under-identified. The percentage of students with IEPs for disabilities is substantially below the state average, and the percentage of students with IEPs for giftedness is substantially above the state average. As a result, students who should be getting services sometimes are not, and many resources are allocated for "gifted students" who may not need them.

The complainant asserts that there are "many, many" children who should have IEPs who do not have them. She further alleges that there is a prevalent practice in the district not to identify students in Title I buildings that need IEPs and to provide those students with a great deal of Tier Two Supports while in elementary school. It is the position of the complainant that while this strategy may work for students at the elementary level, those students are "stranded" when the same level of supports is not available at the middle school level. The complainant states that a teacher at one of the district's elementary schools was told that she should "not write any more IEPs."

The complainant further contends that the district's transportation expenditures unfairly advantage gifted students.

Students With Disabilities

The Shawnee Mission school district identified 9.7% of their students as disabled. (This data and the data specified below were calculated based upon information collected by the State of Kansas for the December 1, 2016 count.)

Across the state of Kansas, districts identified an average of 14.76% of their students as disabled. The range for disability identification across the state was from 7.08% to 31.27%. Percentages for all other districts in Johnson County (Blue Valley, Spring Hill, Gardner, DeSoto, and Olathe), ranged from 8.01% to 16.22% with a mean of 12.63%.

Disability identification rates for the district (based upon data supplied by the district) decreased by a little over 1% over the period of 2012 through 2016. The greatest single year decrease (.64%) occurred between 2012 and 2013.

Federal and state regulations do not define expected identification rates for students in various categories of exceptionality. Schools must have policies and procedures in effect to ensure that all children with exceptionalities (those who have disabilities and those who are gifted) and who are in need of special education and related services are identified, located, and evaluated. Child find in Kansas involves a screening process for children from birth to age 5, and a general education intervention process for children from kindergarten through age 21. Schools in conjunction with parents use these processes to locate, evaluate, and identify children who may need special education and related services. Children in need of special education services should be identified as young as possible, and also as soon as possible after the concern is noted. This includes children who are suspected of having a disability even though they are advancing from grade to grade (K.A.R. 91-40-7(a); 34 C.F.R. 300.111(a)(c)).

As an agency, the Kansas State Department of Education (KSDE) encourages the use of a multi-tiered system of support for all children, encompassing school-wide support for both academic and behavioral competency. This is further emphasized in Kansas special education regulations which, in most cases, require the use of general education interventions (GEI) prior to referring any child in kindergarten through grade 12 for an initial evaluation. GEI requires schools to have data-based documentation of the general education interventions and strategies implemented for each child.

Some schools conduct GEI through a school-wide approach of providing multi-tiered levels of intervention to support children to achieve more successfully. In recent years, this kind of a systemic approach has been referred to as Response to Intervention or RTI. The practices utilized in RTI are based on providing high-quality instruction and intervention matched to child need; monitoring progress frequently to make decisions about change in instruction or goals; and applying child response data to important educational decisions (Response to Intervention: Policy Considerations and implementation. National Association of State Directors of Special Education, 2005). In Kansas, the set of principles and practices found in the literature with regard to RTI is encompassed within Kansas' Multi-tiered System of Support (MTSS).

Other schools accomplish conducting GEI through an individual child problem solving approach, often referred to as student improvement teams (SIT, SAT, TAT, Care Team, etc.). The individual problem solving approach to GEI is consistent with past guidance provided by the state.

Either approach (school-wide or individual problem-solving) may be used as schools seek to provide early intervention for children in need of additional supports to be successful.

From interviews with both teachers and principals, the investigator confirmed that the district is committed to providing and documenting the use of general education interventions with students before referrals for special education evaluation are made. While some classroom teachers expressed the feeling that the intervention process often seemed to take a long time as various strategies were implemented and documented, the majority of those teachers also stated that special education staff were "doing the job they were told to do." No teacher or principal expressed the opinion that any district-level direction had been given to limit the identification of students with disabilities.

The investigator contacted the principal of the building associated with the allegation of a directive not to write any more IEPs. That principal strongly denied that any staff in his building were operating under such a directive.

Gifted Students

As of December 1, 2016, the district identified 3.9% of its students as gifted. Statewide, 2.55% of students were identified as gifted with a range of 0% to 12.86%. Johnson county schools in general identified students as gifted at a rate of 2.07% to 6.98%. The mean for other Johnson County schools was 5%.

Between school years 2012-13 and 2016-17, the number of students identified by the district as Gifted (or dual identified as Gifted and disabled) decreased from 1366 students to 1066 students. That downward trend in the number of identified students began before August of 2015, when the district changed the criteria it uses for identifying a student as Gifted. During the period between August 2012 and August 2015, IQ test results were not included among the criteria to be considered in determining eligibility for gifted service.

Allocation of Resources

Currently, the district employs 19 teachers of the Gifted to serve 935 students (6% of all students receiving special education services). The ratio of teacher to students for gifted service across the district is 1:50.

The district currently employs 280 licensed/certified staff to meet the needs of students with disabilities (including 17 Early Childhood teachers) as well as 307 paraeducators to serve 2309 students with disabilities. The ratio of classified special education staff to students with disabilities is 1:8. When classified staff is included in this count the staff to student ratio becomes 1:4.

Based upon final expenditures for fiscal year 2017, 6% of the district's special education transportation dollars were spent to transport gifted students to centralized locations. Gifted transportation represented under 4% of the overall transportation costs for the district in FY2017.

Summary and Findings Related to Issue 1

Neither state nor federal laws establish identification rates for disabled or gifted students. Rates of student identification as either gifted or disabled cannot be used as a sole criterion to determine whether or not a district's identification practices are flawed.

While the identification rates for this district for students with disabilities fall below the state average, the district's identification rate is within the range of rates reported within both the state and the county. There has been a decline of a little over 1% in the number of students identified as disabled over the period of 2012 to 2017. Schools in the district appear to be emphasizing the use of the MTSS system to support students in the general education setting to the greatest extent possible before moving to a referral for special education services.

This district's rate for identification of students as gifted also falls within the range for districts within Johnson County and within the range for districts across the state. The district's identification rate has declined since 2012.

Far fewer students in the district are identified as gifted than are identified as disabled. Personnel and transportation costs associated with the provision of services to gifted students are exponentially less than the costs associated with the provision of services to students with disabilities in the district.

This investigation found no evidence to support the suggestion that identification rates for either disabled or gifted students are being driven by current district directives, policy, or practices.

A violation of special education laws or regulations is not substantiated on this aspect of this issue.

Issue 2: Specialized support services, like social work services, art therapy, music therapy, functional physical education, occupational therapy, speech therapy, etc. are minimally specified in all IEPs, and they are disproportionately provided to students from resource-rich families.

The complainant contends that support service providers are spread thinly across the district. She asserts that there is a standard practice across the district to minimize the provision of support service to students whose parents do not know how to advocate for those services.

The complainant cites two specific example of instances where needs have not been met. They are as follows:

Student With Spina Bifida

The complainant pointed to the case of a student with Spina Bifida whose IEP does not include Occupational Therapy.

The investigator spoke with the principal of the elementary school where this student is enrolled. The principal reports that the student has a Health Plan but has neither an IEP nor a Section 504 plan. The student has not been referred for special education services. A violation of special education laws or regulations is not substantiated on this aspect of this issue.

Social Worker

The complainant alleges that Social Work support services are spread too thinly across the district. In particular, she points to one building in the district with a population of 620 students and one Social Worker.

According to the Director of Special Education, School Social Workers (SSWs) fell under the management of the Special Education Department during the 2014-15 school year and were only allowed to work with special education students.

Beginning in the 2015-16 school year, supervision of SSWs was pulled away from the Special Education Department and the district went to a model of service delivery that directed SSWs to provide behavioral support to students at Tier 2 or 3 levels of MTSS supports. The social/emotional/ behavioral needs of students who went on to be identified as eligible for and in need of special education services were addressed through the use of other resources and supports.

Currently, the district employs 45 School Social Workers. With an exception in regard to students at the therapeutic day school, School Social Workers in this district are not assigned to work with any identified special education student. The School Social Worker identified by the complainant does not work with special education students. Therefore, allegations regarding the allocation of services provided by these individuals does not fall under the purview of this investigator and were not investigated.

Art Therapy

The complainant also asserts that because the district is not currently employing an Art Therapist, those students who have Art Therapy on their IEP are not receiving services.

The district stipulates that the part-time Art Therapist who was under contract at the start of the 2017-18 school year resigned effective September 14, 2017 having provided little or no service to students during the preceding two-week period.

Thirty minutes of Art Therapy services per week appear on IEPs for four students in the district, each in a different school. The former Art Therapist served those four students over two of his workdays and conducted non-IEP related art activities in two classrooms during portions of those same two days. He was assigned to the therapeutic day school for a total of five and a half hours – the afternoon of one work day and the morning of another.

A new part-time Art Therapist began work in the district on December 4, 2017. Compensatory services are being provided to the 4 students whose IEPs include Art Therapy services.

The September 2017 resignation of the Art Therapist has resulted in a failure of the district to provide the Art Therapy services to four students over a three-month period. Under these circumstances, a violation of special education laws and regulations is substantiated.

Adaptive PE and Music Therapy Services

The complainant also alleges that the Adaptive PE specialist and the Music Therapist are unable to provide IEP-required service to those students on their caseloads because they have been mandated to spend more than half of their time at the therapeutic day school.

The district asserts that while the Adaptive PE specialist carries 33 students on her caseload, she provides direct service to only 4 of those students. Consultative service is provided to the remaining 29 students. On average, those students receiving direct service are seen for less than 15 minutes each. According to the specialist's class list, her direct service caseload is spread across three buildings.

The daily schedule for the Adaptive PE specialist indicates that she is spending 8.25 hours per week at the therapeutic day school. Time for both direct service and consultation is included on the schedule. Sufficient time is allocated to buildings to allow for the provision of all direct service minutes for students on the specialist's assigned caseload.

The Music Therapist provides service to 26 students in the district, two of which receive only consultative service. The average number of minutes per week of direct service provided by the Therapist to students on her caseload is 36. Students are spread across 11 schools.

According to the daily schedule developed by the Music Therapist, she is providing the minutes of service specified in students' IEPs. She reports to the day school beginning at 8 AM on two days per week, leaving at 10:20 AM on both days.

According to the district, the APE specialist and the Music Therapist have not been directed to pull IEP-required coverage from any student in order to provide coverage at the day school.

Schedules for both these service providers show that they are able to deliver the services specified in students' IEPs. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

Provision of Related Services

In exploring the district's alleged inequitable allocation of resources, the investigator reviewed data related to the provision of related services support at Title I buildings vs. the provision of those services at non-Title buildings and discovered that on average, more students are receiving related services in Title buildings than in non-Title buildings.

Overall, there is little difference in the ratio of all related service providers (Speech, OT, and PT) to students at district Title schools vs. non-Title schools. Data was available to show the relationship between the number of special education students and the number of Speech/Language Pathologists. The ratio of students to pathologist is greater for non-Title schools than for Title schools. Seventy-seven percent of elementary Title I buildings have a full-time Speech/Language Pathologist assigned to serve the needs of students. By contrast, only half of non-Title buildings have full-time Speech/Language Pathologists.

In general, as the district asserts, determining compliance by comparing the number of staff and amount of services being provided by Title vs. non-Title schools ignores: 1) the district's obligation to support at-risk students in general education, as required by the Elementary and Secondary Education Act (ESEA); 2) the school district's obligation to comply with child find obligations established by the Individuals with Disabilities Education Act (IDEA), and Kansas Special Education for Exceptional Children Act; and 3) the school's lack of control over where students with disabilities and students in general education reside.

Federal regulations require that students should not be determined to be disabled if their learning problems result primarily from a lack of instruction in reading or math or limited English ability. Kansas regulations further require school districts to implement general education interventions before a student is even referred for a special education evaluation unless school personnel can

demonstrate that such interventions are inadequate to address the student's educational needs.

The high number/higher percentage of at-risk and/or English Language Learners (ELL) students attending Title I schools in combination with requirements for qualified personnel to provide appropriate instruction in regular education settings and collect data from repeated assessments at regular intervals inherently generates the need for Title I schools to be staffed with more regular education support personnel than non-Title buildings. In this district, general education support personnel include Reading Specialists, Math Specialists, Innovation Specialists, Social Workers, and nurses. Title I buildings with high ELL student populations have interpreters, and the district provides extra community support in addition to the typical Social Work support for migrant or homeless families. Although Reading Specialists, Math Specialists, etc. may be assigned to non-Title buildings, the staffing levels are not as high as they are for Title I buildings.

Staffing decisions are made based upon service needs established at the individual building level. IEP teams develop IEPs centered on individual student need. Staffing levels at both Title and non-Title buildings are adjusted to address the needs of the special education students enrolled in each building.

Summary and Findings Related to Issue 2

On average, a greater number of students enrolled at Title I buildings in the district than at non-Title buildings receive related services. The allocation of related service providers throughout the district is not based upon district policy but rather on decisions made by building-level IEP teams regarding service needs of individual students. Additionally, Title I buildings benefit from a higher allocation of general education resources than do non-Title I schools.

The investigator found no evidence to support the complainant's allegation that related services support is disproportionately provided to students from resource-rich families. A violation of special education laws and regulations is not substantiated on this issue.

Summary Related to Concern 2

In the course of this investigation, the investigator found no evidence of any districtwide policy or practice directing an inequitable allocation of resources away from families or students with fewer resources. A violation of special education laws and regulations is not substantiated with regard to this concern.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations. Violations have occurred with regard to

- 34 C.F.R. 300.01, which requires districts to provide FAPE to students in conformity with their IEP by providing the minutes of service specified in the IEP;
- 34 C.F.R. 300.323(a)(c), which requires districts to ensure that an IEP is in effect at the start of each school year for every child with an exceptionality; and
- 34 C.F.R. 300.156 and 34 C.F.R. 300.207, which require districts to ensure that students are instructed by appropriately certified staff;

Therefore, USD #512 is directed to take the following actions:

1) Submit, within 20 days of the receipt of this report, a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will comply with

    a. 34 C.F.R. 300.01 by providing the minutes of service to special education students that are specified in each student's IEP,

    b. 34 C.F.R. 300.323(a)(c), which requires that an IEP be in effect for every child with an exceptionality at the start of each school year, and

    c. 34 C.F.R. 300.156 and 34 C.F.R. 300.207 by ensuring that students are instructed by appropriately certified staff.

2) Within 30 school days of the receipt of this report, provide to Early Childhood, Title and Special Education services a plan designed to address the provision of the level of services specified in students' IEPs. Specifically, the plan should address the following situations: a) the transfer of a new special education student into the building; b) the absence or resignation of a service provider or paraeducator; and c) the unanticipated behavioral/safety demands of a single student.

    The plan should also address the delivery of services to Gifted students who are not enrolled in Gifted classes and should also address how decisions regarding any need for compensatory services will be made.

3) Within 20 school days of the receipt of this report, provide to Early Childhood, Title and Special Education services a plan for ensuring that there is no unnecessary delay in the delivery of special education services to students at the start of each school year.

a. The plan should include a description of how decisions will be made regarding the need for compensatory services for those students for whom the initiation of services for the 2017-18 school year was delayed beyond August 17, 2017.

4) Within 5 school days of the completion of the delivery of compensatory services for students who did not receive Art Therapy services due to staff resignation, provide notice to Early Childhood, Title and Special Education Services a summary reflecting
    a. how much service was missed for each student, and
    b. when those compensatory services were delivered.

5) Within 30 school days of the receipt of this report, provide to Early Childhood, Special Education, and Title Services and to Susan Helbert, Interim Director of Teacher Licensure and Accreditation, a copy of a "Preview" of the portion of the Licensed Personnel Report (a final copy of which is scheduled to be submitted to KSDE in February) related to staff at the therapeutic day school. That preview report should include a) the name of each teacher, b) their assignment as it will be reported to KSDE, c) the subject (content area) in which the teacher will be providing instruction, and d) the names of any co-teacher who will be collaborating with that teacher in providing instruction or awarding student grades.

Further, USD #512 shall, within 10 calendar days of the date of this report, submit to Early Childhood, Special Education and Title Services one of the following:

a) A statement verifying acceptance of the corrective action or actions specified in this report;

b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (c).

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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____
Diana Durkin, Complaint Investigator

(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).

The KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
_____ UNIFIED SCHOOL DISTRICT #___
ON JANUARY 25, 2018

DATE OF REPORT: FEBRUARY 26, 2018

This report is in response to a complaint filed with our office by _____ and _____ _____ on behalf of their daughter, ____. _____ will be referred to as "the student" in the remainder of this report. Mr. and Mrs. _____ will be referred to as "the parents."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with _____, Executive Director of the _____ Area Educational Services Interlocal Cooperative, on February 1, 2018. On February 1, and 3, 2018, the investigator spoke by telephone with Dr. _____, Assistant Director of Special Education for the Interlocal Cooperative.

The investigator spoke by telephone with the student's mother on February 5, 6, and 22, 2018.

In completing this investigation, the complaint investigator reviewed the following material:

- Attendance records for the student for grades Kdg-3
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated November 1, 2016
- Psychological Report dated December 16, 2016
- Evaluation/Eligibility Team Report dated January 5, 2017
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated January 5, 2017
- Student Progress Monitoring Graphs for DIBELS for the 2016-17 school year (first and second grade levels)
- Student Progress Monitoring Graphs for DIBELS for the 2017-18 school year (second and third grade levels)
- Email exchange dated August 22, 2017 between the general education teacher and Assistant Principal
- GEI Team Referral Form dated August 23, 2017

- Literacy Intervention Services – Initial Assessment dated August 26, 2017
- Email dated August 27, 2017 from the student's mother to the Principal requesting an Independent Educational Evaluation (IEE)
- Email exchange dated August 29, 2017 between the student's mother and the Assistant Director regarding an IEE
- Email exchanges dated August 30, 2017 between the student's mother to the Assistant Director
- VES Strategy Team Agenda dated September 5, 2017
- Letter to parents from Assistant Director dated September 5, 2017 regarding Independent Educational Evaluation
- Teacher Report of Student Performance dated September 5, 2017
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated September 8, 2017
- Evaluation/Eligibility Team Report dated September 8, 2017
- Notice of Meeting for September 8, 2017 Evaluation/Eligibility/IEP meeting
- IEP for the student dated September 8, 2017
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated September 8, 2017
- Notice of Meeting for September 22, 2017 Evaluation/Eligibility/IEP meeting
- IEP Meeting Notes dated September 22, 2017
- Email dated September 25, 2017 from the Assistant Director to the student's mother regarding an IEP and notice and consent document
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated September 25, 2017
- Email from the student's mother to the Assistant Director dated October 2, 2017 requesting an IEP meeting
- Email dated October 4, 2017 from the student's mother to the Assistant Director
- Email from the student's mother to the Assistant Director dated October 20, 2017
- Notice of Meeting for October 20, 2017 Evaluation/Eligibility/IEP Team meeting
- IEP Meeting Notes dated October 20, 2017
- Notice of Meeting for November 1, 2017 Evaluation/Eligibility/IEP meeting
- IEP for this student dated November 1, 2017
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement Change in Services, Change in Placement, and Request for Consent dated November 3, 2017 (district proposal)

- Email dated November 3, 2017 from the Assistant Director to the parent
- Email dated November 3, 2017 from the parent to the Assistant Director
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement Change in Services, Change in Placement, and Request for Consent dated November 3 and November 7, 2017 (parent response)
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated November 6, 2017
- Letter dated November 13, 2017 from the School Psychologist to the parents
- Email from the student's mother to the Assistant Director dated November 28, 2017 regarding an IEE

Background Information

This investigation involves an 8-year-old girl who is enrolled in the 3rd grade in her neighborhood elementary school, the same school she has attended since Kindergarten.

According to her parents, the student began experiencing problems with reading, math, and spelling at the Kindergarten level. The parents report that they have worked with the student at home, helping her learn sight words and utilizing a homeschooling computerized Math curriculum called Teaching Textbooks. Despite these interventions, the parents contend that the student's letter naming, oral reading, and math skills have been below district benchmarks throughout her school career.

In November of the student's second grade year, the parents asked the district to conduct an initial evaluation to determine if their daughter would qualify for special education support. At that point, the student was, according to a December 16, 2016 Psychological Report, "achieving well below grade level benchmarks in oral reading fluency – words correct (17th percentile). Her oral reading fluency – accuracy (was) below benchmark (28th percentile), while her oral reading fluency – retell and retell quality (were) at grade level…"

The psychologist noted that during a December 2016 classroom observation the student was seen to reverse letters when writing. The psychologist reported that the student was not the lowest student in a small reading group and was observed to self-correct errors and answer oral questions about what the group was reading. She followed verbal directions and changed activities without losing focus. She did read slowly and had difficulty retrieving some words.

The student was receiving reading intervention from an at-risk reading teacher for 30 minutes per day, 5 days per week, in addition to 20-minute, twice weekly TIER II instruction. She was in a leveled reading group where small group and one-to-one instruction was provided as needed. Her spelling list was reduced, and she was given extra time to complete assignments as needed. She was also receiving after-school tutoring from the reading specialist for one hour each week.

At the time of the evaluation, the Psychological Report noted that teachers had reported that the student performed better when working in one-to-one settings and often needed individual assistance with new concepts. It was noted that if work was difficult for her, she would "put (the) work away in her desk to take home for homework."

An evaluation was conducted, and on January 5, 2017 an eligibility meeting was held. While the student's oral reading fluency was determined to be below average, the team determined that she was making progress with the interventions in place at that time and was therefore not in need of special education services. Records indicate that TIER II supports were to be continued and the parents planned to employ a tutor to work with the student. Both parents were present at the meeting and signed the Evaluation/Eligibility Team Report indicating they agreed with the conclusions outlined in the team report.

The district provided the parents with prior written notice of a refusal to provide special education services on January 5, 2017. According to the prior written notice form, "A review of all data sources (indicated that the student was) functioning within the average range cognitively and academically in all areas assessed, except for reading fluency. However, (the student was) making progress in reading fluency with interventions in place."

In their complaint, the parents state that beginning August 28, 2017 they began to contract tutoring services for the student from a "Certified Dyslexia specialist" in the private sector. These services are provided 240 minutes per week before school in a "small group of two homogenized students in a quiet room with no other students…"

Issues

In their complaint, the parents identify two issues:

<u>Issue One:</u> The parents are entitled to compensation because the district failed to meet its legal obligations with regard to Child Find by not recognizing the student's need for Special Education while she was in second grade.

Applicable Laws and Regulations

Kansas regulations, at K.A.R. 91-40-7, state that districts must "adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in (their jurisdictions), including children with exceptionalities who meet any of the following criteria:

1) Attend private schools;
2) are highly mobile, including migrant and homeless children; or
3) are suspected of being children with disabilities even though they are advancing from grade to grade."

For children from ages 5-21, those policies and procedures must include screening procedures that include "observations, instruments, measures, and techniques that disclose any potential exceptionality **and indicate a need for evaluation** (emphasis added), including hearing and vision screening as required by state law" and ensure "the early identification and assessment of disabilities in children." For school age children, Child Find involves a general education intervention process.

The Kansas State Department of Education (KSDE) encourages districts to use a multi-tiered system of support for all children that includes school-wide support to build both academic and behavioral competencies. With the exception permitting an evaluation when both the district and parents agree that an evaluation is appropriate, Kansas special education regulations require the use of general education interventions (GEI) prior to referring a student for an initial evaluation for special education. GEI requires districts to have data-based documentation of general education interventions and strategies implemented for each child.

Some districts conduct GEI through a school-wide approach of providing multi-tiered levels of interventions to support children to achieve more successfully. That approach is sometimes referred to as "Response to Intervention" or "RtI." In Kansas, the set of principles and practices that are found in literature with regard to RtI is encompassed within the Multi-Tiered System of Support (MTSS).

Some districts conduct GEI through an individual child problem solving approach, often referred to as "student improvement teams" (SIT). Either approach (school-wide or individual problem solving) may be used as schools seek to provide early intervention for children in need of additional supports to be successful.

The GEI process should continue until a successful intervention is determined, or until it is evident that the child's needs require resources beyond those available in general education and the team suspects the student is a child with an exceptionality who should be referred for an initial special education evaluation.

There is no specified timeline regarding how long a student may be involved in the GEI process. The student's needs and the nature and success of

interventions are the determining factors. The extent of the presenting concern, the effectiveness of interventions tried, and the degree to which the interventions require substantial resources are important to consider when deciding whether a child should be referred for possible special education services. When a team begins to question whether the student might be a child with an exceptionality, or when the team begins to wonder whether the student might need specially designed instruction, a referral for initial evaluation needs to be considered. Certainly, regardless of what GEI process is being used, a parent may request an evaluation at any time.

Upon receipt of a parent request for evaluation or when a team makes the decision that a student might be a child with an exceptionality, the district must provide parents with a copy of a procedural safeguards notice (Parents Rights). Parents must also be provided with prior written notice that describes any evaluation procedure the school proposes to conduct (34 C.F.R. 300.304(a)). That notice must meet requirements regarding content and must be in language that the general public would understand. Districts must have written evidence that notice has been provided (34 C.F.R. 300.503 (c)).

The written consent of the parent must be obtained before the initial evaluation is conducted. The district then has 60 school days to complete the evaluation. That timeline starts on the day written parental consent is received and ends with the implementation of an IEP if the child is found eligible for special education services or with the completion of an evaluation report and an eligibility meeting if the child is not found eligible for special education services.

Eligibility decisions are made by a team of qualified professionals and the parents of the child who has been evaluated. The team must ensure that information obtained from all sources used in the evaluation is documented and carefully considered (34 C.F.R. 300.306 (c)(1)(ii)). Information must come from a variety of sources.

The team must determine whether a child meets the categorical definition of an exceptionality and, as a result of that exceptionality, ***needs special education and related services*** (34 C.F.R. 300.8). If a student meets the definition of an exceptionality category but it is determined that the student does not need special education and related services, s/he will not be determined to be eligible.

By definition, special education means specially designed instruction wherein the instructional content, methodology, or delivery are so unique that the student is unable to make appropriate progress through the general education curriculum without the support of special education. If the evaluation data suggests that the child's needs can be met within regular education without the support of special education and related services, the team must determine that the child is not eligible to receive those services.

For a child suspected of having a learning disability, Kansas regulations state that the team must determine whether or not the student can achieve adequately for his/her age or to meet State-approved grade-level standards when provided with appropriate learning experiences and instruction. The team must also determine whether or not the student is able to make sufficient progress to meet age or State-approved grade-level standards when using scientific, research-based intervention. The team must determine whether the child exhibits patterns of strength and weakness in performance, achievement, or both relative to his/her age, State-approved grade-level standards, or intellectual development. Any lack of progress cannot be the result of:

- A visual, hearing or motor disability;
- intellectual disability;
- emotional disturbance;
- cultural factors;
- environmental or economic disadvantage; or
- limited English proficiency.

If the student has participated in a process that assesses the child's response to scientific, research-based interventions (RtI), the team must document the instructional strategies used and the data collected. [See K.A.R. 91-40-10(e) and(f)]

After the eligibility determination is made, the district must provide prior written notice to the parents as to whether or not the district proposes to initially identify the child with an exceptionality.

If the parents disagree with the district's evaluation, they have the right to ask for an independent educational evaluation at public expense. If such a request is made, the district must either:

- provide information to the parent about where an independent educational evaluation can be obtained and provide the agency criteria for that evaluation; and
- ensure that the evaluation is provided at public expense (unless a special education due process hearing officer determines that the independent educational evaluation did not meet agency criteria, or
- initiate a due process hearing to show the district's evaluation was appropriate. [See K.A.R. 91-40-12]

Case History

According to the parents, the student first began to struggle in letter naming while in Kindergarten and MTSS support was initiated. The parents state that the student's oral reading scores were low throughout first grade.

In November of 2016, the parents referred the student for an initial special education evaluation. Written consent for the evaluation was given by the

parents on November 1, 2016. An evaluation was conducted and the team – which included the parents – determined that the while the student did demonstrate delays with regard to some reading skills, she was making progress with the interventions that were being provided at the time and therefore was not in need of special education services. The district continued to provide the student with TIER II supports in the general education setting, and the parents secured private tutoring for the student.

On August 22, 2017 (one week into the 2017-18 school year), the student's general education teacher and the Assistant Principal exchanged emails regarding the need to bring the student's case back before the building level team for further discussion of her reading scores. The building Reading Specialist who had tutored the student over the summer also expressed concerns with the student's most recent DIBELS scores. Testing had shown the student to be reading at a rate of 26 words per minute (the benchmark for the beginning of 3rd grade was 70 words per minute). A referral to the building team was submitted on August 23, 2017. The student was scheduled for a team review on September 5, 2017.

The parents opted to pay for an outside evaluation by a specialist who determined that the student displayed "characteristics of dyslexia." The evaluator – who was subsequently contracted by the parents to provide 240 minutes per week of instruction to the student – recommended that "a research-based Orton-Gillingham method, Alphabet Phonics," be used with the student. In her report, the evaluator stated that "an Academic Language Therapist should deliver (instruction) at least three times a week." Additionally, the evaluator wrote that "appropriate accommodations and modifications provided by (the student's) teachers will help her succeed in school."

On August 27, 2017, the parents sent an email to the School Psychologist requesting an Independent Educational Evaluation. The Assistant Director followed up with the parent regarding that request on August 29, 2017.

In an email to the Assistant Director on August 30, 2017, the student's mother indicated that she understood that the district intended to open an evaluation to consider the student's more current performance data as well as the report completed by an outside practitioner. The Assistant Director followed up with the parent on August 30th by email and telephone. The Assistant Director shared with the parent that after a review of the student's performance during the late spring of the 2016-17 school year and after reviewing current assessment data, the school believed that further consideration of the student's eligibility for special education was warranted. The Assistant Director indicated that the school planned to seek the parent's written consent to open a new educational evaluation and told the parent that that the outside evaluator's report would be considered as would current performance information for the student. According to the Assistant Director, the team would convene to consider the presence of a

learning disability and also to determine whether new evidence suggested the need for instructional support beyond what could be provided and sustained in the general education classroom.

In an email on August 30, 2017, the Assistant Director assured the parent that she would be able to request an IEE at a later date if she so chose.

On September 8, 2017, the parents gave written consent for the district to again conduct an evaluation of the student to determine whether or not she was eligible for and in need of special education services.

An evaluation/eligibility team meeting was held that same day (September 8th). In addition to reviewing input from the student's general education classroom teacher and results of classroom assessments, the team considered the outside evaluation report provided by the parents. It was determined that the student was demonstrating more extensive needs than were seen during the district's November 2016 evaluation. The team identified needs in the areas of "basic reading, reading fluency, written expression, math reasoning and problem solving and math calculations. The student was determined to be eligible for and in need of special education services. Her primary exceptionality was determined to be "Learning Disabled."

The district provided the parents with prior written notice of its proposal to identify the student as an exceptional child who was eligible to receive special education services. The prior written notice states that the student was not making adequate progress in oral reading fluency, written expression, math reasoning and math problem solving as expected "even with intensive interventions in place."

The first of a series of meetings was held on September 8, 2017. At that meeting, the team began to develop an IEP for the student. A second meeting was held on September 22, 2018. Discussion at that meeting centered on the development of annual goals. The parents and the district could not come to consensus regarding the criteria for reading goals, on the student's need for special education services in the area of reading, or on the amount of language intervention services the district would provide. The parents also wanted the district to specify in the IEP that services would be delivered to the student in a small homogenous group of no more than 4 students; that limitation was not included in the IEP provided to the parents subsequent to the meeting.

The district and the parents did not come to an agreement regarding the special education and related services to be provided to the student. The district proposed that some special education services be delivered in a special education setting. The parents voiced concerns with regard to the designated special education teacher's skills in using the Orton-Gillingham (OG) approach to reading instruction. They also expressed concern regarding the impact the

teacher's accent might have on the student's instruction. The parents proposed that the district pay for a private tutor for the student.

The parents and the district did reach agreement regarding the provision of program modifications and the delivery of special education services (support from a paraeducator) in the general education classroom.

The parents received a copy of the district's proposed IEP on September 25, 2017 as well as a written notice of the district's proposal to provide the student with special education services. The parents declined to provide consent for services. According to the parent, their decision to withhold consent was based upon the following:

- The parents had concerns regarding the effectiveness of the special education teacher assigned to serve the student;
- They believed that goals were not "appropriately ambitious;"
- The parents contended that services did not include "minutes, frequency, and purpose;"
- The IEP document did not specify that the parents would be given progress reports every 2 weeks; and
- The parents' request that the district pay an outside therapist to work with the student was not addressed.

On October 2, 2017, the student's mother requested another IEP Team meeting. The parent outlined the topics she wanted to discuss in an email on October 4, 2017; some of those topics were IEP-related and others were not. On October 19, 2017, the parents met privately with the building principal and the Assistant Director for the Service Center. At that meeting, the group discussed what the parents believed to be essential qualifications for the special education teacher who would be serving the student. The parents also asked the district to reimburse them for tutoring they had secured for the student beginning in January of 2017. (The district provided the parents with written notice of refusal to provide this reimbursement on November 6, 2017.)

A third IEP team meeting was then held on October 20, 2017. During that meeting, the team discussed the student's reading goal as well as the setting in which reading instruction would be provided. Specifically, the parents wanted the IEP to include a statement that a "quiet environment" be listed on the IEP. According to the parent, the district declined to offer that accommodation.

A second private meeting was held between the principal, Assistant Director, and the parents prior to another IEP Team meeting on November 1, 2017. Discussion at that meeting centered on the training district staff received in the Orton-Gillingham method and on the curriculum being used in the district for reading instruction. The proposed reading goal for the student was modified. The parents again requested special education support in the area of math for

the student and asked that she be provided instruction in a quiet environment. (The parents provided the district with three documents in support of that request.) The district proposed that the IEP include structured support for the assigned special education teacher from another district teacher with greater training in the Orton-Gillingham approach.

The parents asked to have extended school year services (ESY) included in the IEP. The district indicated that the team was not yet able to determine whether ESY services were needed but would meet again at a later date to make that determination.

On November 3, 2017, the Assistant Director sent an email to the student's mother which included a copy of the IEP developed over the period of September 8 through November 1, 2017. The email also included a copy of procedural safeguards and a notice of proposed action outlining the district's proposal to initiate special education services for the student.

As outlined in both the IEP and the prior written notice form, the district proposed the following:

- 45 minutes per day of special education services in a special education setting for 5 days per week;
- paraeducator support in the general education setting for core language arts, math, social studies, and science as well as during math intervention;
- 1 hour per day of consultative support from a district reading specialist for 5 days per week during the first three weeks of special education service to the student; and
- after the first three weeks of service specified above, 1 hour per week of consultative support from a district reading specialist for the remainder of the 2017-18 school year.

The IEP and prior written notice form also specified two "Supplementary Aids and Services:

- that "instruction (would) be given (in) an area with minimal distractions for (the student) with a small group of similar skill sets," and
- that "an explicit, systematic, and cumulative, structured multi-sensory approach (would) be used."

The proposed IEP included five specific accommodations and three program modifications.

The prior notice form outlined the district's position with regard to several requests made by the parent during the process of IEP development. Those elements addressed included the following:

- the target for a goal related to words read aloud in one minute;
- the accuracy level for a phonics goal;
- the decision regarding ESY services;
- the amount of time allocated for language arts intervention;
- the provision of math services; and
- the parent's request that the student's special education service provider meet International Dyslexia Association qualification standards.

The student's mother responded to the Assistant Director via email on November 3, 2017. The parent gave written consent for some – but not all – of the district's proposed actions. The parent agreed to the following:

- paraeducator support in the general education classroom,
- all five proposed accommodations, and
- one of three proposed program modifications

On November 3, 2017, the parent also sent an email to the district inquiring about her request for compensatory services. On November 6, 2017, the district provided the parents with prior written notice of the district's refusal to provide compensatory education services and/or reimbursement for outside tutoring for the student beginning January 2017.

The School Psychologist for the district sent a letter to the parents on November 13, 2017, confirming those elements of the student's proposed IEP that were agreed to by the parents and those that were not. The letter informed the parents that the district was "ready, willing, and able" to provide the remaining services outlined in the IEP and Prior Written Notice of November 3, 2017.

The district received a request for an IEE from the parent in an email on November 28, 2017. That issue was addressed through mediation.

Parents' Position

It is the position of the parents that the district was obligated by Kansas regulations to have identified the student as a child with a disability even though she was advancing from grade to grade. According to the parents, the district failed in its child find obligations because – despite her academic struggles since Kindergarten – the student was not determined to be eligible for and in need of special education services until the beginning of third grade.

The parents believe that they are entitled to reimbursement for the amount they have paid for private tutoring for the student since January 5, 2017 – the date of the eligibility meeting when it was determined that the student was not in need of special education services.

District's Positon

The district asserts that the decision to find the student ineligible for special education support in January of 2017 was appropriate. While the student did meet the categorical definition of a child with an exceptionality, the data presented during the eligibility meeting of January 5, 2017 did not substantiate that special education services were required ***at that time*** to enable the student to receive educational benefit. Rather, the team – which included the student's parents – determined that the student was responding well to interventions and making adequate progress with the services available through the general education curriculum.

It is the district's position that the student's progress was monitored throughout the remainder of the 2016-17 school year and at the beginning of the 2017-18 school year, at which point it became evident that the student was no longer making progress at an acceptable level. In view of the new performance data, the student was found eligible for ***and in need of*** special education on September 8, 2017. Two IEP Team meetings were convened (on September 8 and 22, 2017), and the parents were provided with prior written notice regarding proposed services on September 25, 2017.

The district states that it responded in a timely fashion to the parents' request for additional IEP Team meetings and convened those meetings on October 20 and November 1, 2017. The IEP originally proposed by the district in September was modified by the team over the course of these meetings. The district provided prior written notice to the parents regarding the revised IEP and the district's responses to requests made by the parents during the subsequent meetings in October and November.

When the parents provided consent for some but not all of the services specified in the proposed IEP, the district asserts that – in a good faith effort to work with the parents to meet the needs of the student – the partial services agreed to by the parent were implemented. It was the district's hope, according to the Assistant Director, that the school and the parent could continue to work toward consensus regarding the remaining placement and service issues.

Findings and Conclusion

Beginning at the Kindergarten level, the district recognized that the student was struggling to develop reading skills and began implementing MTSS support. Interventions were put in place, and the student's progress was monitored throughout the remainder of her Kindergarten year and on through first grade and second grade.

The parents gave written consent for an initial evaluation for special education on November 4, 2016. That evaluation was completed, and an evaluation team

meeting was held on January 5, 2017 – well within the allowed 60-school day timeline. The team – which included the parents – determined that while the student did meet the categorical definition of a child with a disability, the educational interventions that were in place in the general education setting were allowing the student to make educational progress. The student's needs at that time did not appear to require support beyond what was already available to her in her second-grade classroom, so the team determined that she was not at that time in need of special education services. The parents were provided prior written notice of the team's decision.

The district provided general education interventions to the student for the remainder of her second-grade year. Within a week of the start of the 2017-18 school year, school staff had raised concerns regarding the student's rate of progress despite interventions in the spring and summer of 2017. The district again obtained written consent for an evaluation and determined that the student's need for support exceeded what was available to her in the general education setting. The student was deemed eligible for and in need of special education services, and the process of developing an IEP was initiated.

The parents and district staff participated in a total of 6 meetings – 4 IEP Team meetings and 2 additional meetings to address parent concerns. Parents were given appropriate notice of all meetings and prior written notice of the district's proposed actions with regard to special education services for the student. The parents gave written consent for the implementation of some – but not all – of the services outlined in the proposed IEP, and those services were implemented promptly by the district.

The district clearly has in place policies and procedures designed to identify, locate, and evaluate children with exceptionalities, and those policies and procedures were implemented with regard to this student. The district assessed the student's skills in the general education classroom setting beginning at the Kindergarten level and has conducted on-going monitoring of her progress throughout the following years. The decision made by the evaluation team in January of 2017 finding her ineligible for special education services was based upon data available to the team at that time which showed the student was making progress with the interventions available to her in the general education setting. The parents were present at that meeting and signed the report indicating they agreed with the conclusions reflected therein.

When, in September of 2017, the team determined the student's needs exceeded the resources in the general education classroom, that decision was based upon data systematically collected by the district in the period following that initial evaluation. The fact that the parents opted to decline some of the district's proposed services does not mean that the district failed to offer services to the student once the need for those services was identified. Once eligibility

was established, the district appropriately followed required procedures to design and implement an IEP.

Evidence reviewed in the course of this investigation does not support the parents' contention that the district failed to appropriately execute its Child Find responsibilities with regard to this student. A violation of special education laws and regulations is not substantiated on this issue. No compensatory services are ordered.

Issue Two: Because the student has an SLD (Specific Learning Disability) in reading and reading fluency, it is imperative that she be taught to read by a teacher who has sufficient training and experience in an evidence-based methodology based upon scientific research and data in order to provide her with the services outlined in her IEP.

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).

The Every Student Succeeds Act of 2015 states that Public elementary and secondary special education teachers must 1) have obtained full state certification as a special education teacher (including participation in an alternative route to certification so long as such route meets the requirements of the law) or passed the state special education teachers licensing examination; and 2) hold a license to teach in the state as a special education teacher, except teachers teaching in a public charter school who must meet the requirements set forth in the state's public charter school law; and 3) has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and 4) hold at least a bachelor's degree. [See, Every Student Succeeds Act, Section 9214(d)]

Kansas statutes, at K.S.A. 72-962(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…"

State Board teacher standards are met for teachers of children with a disability by holding an endorsement in either Adaptive Special Education or Functional

Special Education [See Kansas Licensed Personnel Guide, p. 31]. Thus, for any teacher holding such a special education endorsement, there is a presumption of qualification to provide special education services.

Regarding instructional methodology, the Federal Register at 64 FR 12552, March 12, 1999, states that "the courts have indicated (that a school district) is not required to 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."

Further, the Hearing Officer in Gwinnet County Sch. Sys., 4 ECLPR 98, 419, 429 opined, "Providing information to parents is not equivalent to giving parents the right to choose a particular method or a particular teacher. If the method provided by the school district is appropriate and the training of the instructor is appropriate, the parents have no right to insist on an alternate method or teacher, even if the alternate method or teacher may be considered better." ." Indeed, even the United States Supreme Court has said that as long as a student is making appropriate progress, decisions regarding instructional methodologies are best left to school officials. See: Hendrick Hudson Dist. Bd. Of Ed. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 553 IDELR 656 (1982)

Parents' Position

It is the parent's contention that the teacher designated to provided special education services to the student is not adequately qualified to deliver that service. They assert that the student's instruction should be provided by a "dyslexia practitioner or dyslexia therapist" as recommended by the International Dyslexia Association (IDA). The parents maintain that because the assigned teacher is not a Certified Dyslexia Therapist and is therefore not qualified to provide instruction, the district should contract for tutoring for a one year period with the individual currently being contracted by the parents to work with the student for 240 minutes per week in an outside setting.

In support of their position, the parents cite state regulations at K.A.R. 91-40-1(III) and assert that the district is required to provide specially designed instruction, in accordance with the student's IEP, to ensure her access to the general education curriculum, so that she can meet the educational standards within the district that apply to all students. They further cite federal regulations which "require that a student's IEP be implemented as written." It is the parents' assertion that the student's IEP cannot be implemented as it is written unless the individual providing special education services is a Certified Dyslexia Therapist.

According to the parents, the district has not provided them with specific information as to which instructional program will be used with the student but

has indicated that the Wilson Reading System will be utilized in some fashion. Parents point to materials provided by the Wilson Reading System which state, "We strongly recommend that students needing intense remediation with the Wilson Reading System receive instruction from a WRS certified teacher. While some teachers with multisensory, structured language training have been able to use the WRS program and materials with a degree of success after attending the three-day WRS Introductory Workshop, they are not considered trained in the Wilson Reading System."

The parents further assert that the district's plan to provide the assigned special education teacher with consultative support from a district reading specialist underscores the fact that the assigned teacher is inadequately trained. The parents state that while they acknowledge that the proposed consultant has a higher degree of specialized training than the assigned teacher, they believe that the district's proposed plan for service – including the district's refusal to identify a particular instructional program for the student – represents a continuation of the same non-specialized approach to instruction the district has been using through general education interventions. They believe that approach will continue to be unsuccessful in remediating the student's reading deficits.

District's Position

The district asserts that the staff member assigned to provide special education services to the student (should the parents consent to the provision of those services) is appropriately and adequately trained. According to the district, the teacher is appropriately licensed and certified and is experienced in classroom instruction. In addition, the teacher has had specific training focused on research-based reading methodology and instruction. That training included a course on Literacy Intervention and a 2-day, district-sponsored training on OG.

Beyond the formal education and training required to meet state licensure requirements and the knowledge and experience gained from delivering instruction to students in a classroom setting, this teacher – like other Cooperative licensed teachers – has received training in the research-based Orton-Gillingham (OG) approach. The district believes that the teacher is capable of implementing programs and providing direct, small group, and individual instruction through a variety of curriculums based upon the OG approach.

According to the Assistant Director, in 2000, the _____ Area Educational Services Interlocal Cooperative put together a team to discuss reading programs that could be purchased for special education students. That team researched at least 10 different programs and determined that no one program seemed to fit the needs of all students. The team determined that the Orton-Gillingham approach – the methodology of instruction from AOGPE (Academy of Orton-Gillingham Practitioners and Educators) – would be adopted.

The phrase “Orton-Gillingham approach” refers to the structured, sequential, multisensory techniques established by Dr. Orton, Ms. Gillingham, and their colleagues. Many programs today incorporate methods and principles first described in this foundational work, as well as other practices supported by research.

The district decided that several different instructional programs could be made available that would allow for differentiated approaches to instruction for students. The district notes that the OG approach serves as the foundation when delivering multi-sensory instruction supported through the use of teacher-selected curricular programs such as SPIRE, Saxon Phonics, Lindamood-Bell, and Wilson Reading. These programs are not the approach but rather are the vehicle through which multi-sensory approach to instruction is delivered to support the unique needs of individual students. It was determined that a minimum of two days of training in the OG methodology would be required for all appropriate service providers.

When developing the student’s November 1, 2017 IEP, the district contends that it acknowledged the student’s need for “an explicit, systematic, cumulative, multi-sensory approach” when receiving direct instruction in the special education setting. The district notes that when responding to the district’s prior written notice of November 3, 2017, the parents specifically denied consent for the district to implement this aspect of the student’s IEP.

The district also maintains that in response to the parents’ statement that they felt a specific Reading Specialist for the district would be a more qualified instructor for the student than the assigned teacher, the district – in a good faith effort to come to consensus on the development of the proposed IEP – added consultative services from that Reading Specialist to the student’s IEP. The Assistant Director states that the district stands ready, willing, and able to provide services to the student if parents give their written consent.

Findings and Conclusions

Kansas regulations, at K.A.R. 91-40-51, state that parents may submit a complaint alleging that a district has violated a state or federal special education law or regulation. In this case, the parents are alleging that the district has failed to provide services to the student as outlined in her IEP. However, the district has not yet been given an opportunity to deliver those services because the parents have declined to give written consent for their delivery. Parents have based their decision to withhold consent on their assertion that the assigned special education teacher lacks the training needed to provide the type of instruction needed by the student. They contend that because the teacher is unqualified, the district is unable to implement the student’s IEP as written and has therefore violated special education laws and regulations.

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 district has proposed that the student receive direct reading instruction in a special education classroom using an "explicit, systematic, cumulative, multi-sensory approach." While the district believes that the assigned teacher is fully capable of delivering that instruction, the district proposed the addition of consultative support for the assigned teacher from a Reading Specialist for the sole purpose of providing additional assurances to the parents.

Special education laws and regulations do not grant the 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. If the parents object to decisions made by a district regarding personnel or methodology and feel that the student's needs are better met through other avenues, they may decline district-proposed services and avail themselves of other opportunities they believe better meet their child's needs. The district is not, however, obligated to pay for services secured by the parent as a matter of personal preference.

Under these circumstances, a violation of special education laws 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 laws and regulations on issues presented in this complaint. Therefore, no corrective actions are warranted.

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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Diana Durkin, Complaint Investigator

(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)**.**

KANSAS STATE DEPARTMENT OF EDUCATION

REPORT OF COMPLAINT
FILED AGAINST
_____ PUBLIC SCHOOLS #___
ON FEBRUARY 1, 2018

DATE OF REPORT: MARCH 6, 2018

This report is in response to a complaint filed with our office on behalf of _____ by his mother, _____. _____ will be referred to as "the student" in the remainder of this report. Ms. _____ will be referred to as "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with _____, Director of Special Education for USD #___, on February 8, 2018. On February 12 and 22, 2018, the investigator spoke by telephone with the Assistant Director of Special Education, _____.

The investigator spoke by telephone with the parent on February 5, 13 and 28, 2018.

In completing this investigation, the complaint investigator reviewed the following material:

- Notice of Meeting dated December 22, 2017
- Notice of Meeting dated February 9, 2018
- IEP for this student dated February 9, 2018
- Email dated February 13, 2018 from the classroom teacher to the Assistant Director
- Meeting Notes Regarding Evaluation Report Consideration dated February 26, 2018
- Reevaluation Report (updated version) dated November 30, 2017

Background Information

This investigation involves a 15-year-old boy who was enrolled in the 9th grade. The student is currently placed at the _____ Juvenile Detention Center (JDC) in _____. He attends school at the center, and his special education services are provided in that setting.

By report of the parent, the student had been in a court ordered day school placement but was scheduled to move to a placement at a high school in the Spring of the 2016-17 school year. In June of 2017, the student was placed in state custody, and in July of 2017 he was moved to Parsons State Hospital. Parsons adopted the IEP that had been

developed by the previous district. While at Parsons, the student was to undergo a mental health evaluation at the recommendation of KVC Health Systems.

According to the parent, the student was transferred to the _____ JDC in September of 2017. The parent reports that she requested that a special reevaluation be conducted. That re-evaluation was completed and a re-evaluation meeting was held on November 30, 2017.

An IEP Team meeting was subsequently held on January 9, 2018.

Issues

In her complaint, the parent asserts that the district has not allowed her to take an active role in her son's education and has resisted or hindered her efforts to do so. It is the parent's position that what she believes to be valid questions or requests have not been addressed or responses have been unreasonably delayed. In her complaint, the parent has identified four specific examples of what she believes to be inappropriate actions on the part of the district:

Issue One: The district has not complied with the parent's request that she be provided with contact information regarding Mental Health Center staff.

FERPA (the Family Educational Rights and Privacy Act of 1974) gives parents the right to inspect and review their child's educational records. An "educational record" means any record that is directly related to a student and maintained by a school district. Parents have a right to inspect and review their child's educational record, and district's must comply with a parent's request to inspect educational records without unnecessary delay.

The parent asserts that at an initial meeting with the student's JDC general education teacher on September 19, 2017 she asked for the email address of the individual who conducted a court-ordered evaluation of the student. According to the parent, the teacher declined to provide contact information, indicated that the person in question would be contacting the parent but gave the parent no indication of when that contact would be made.

It is the district's position that it was not obligated to provide the parent with personal contact information for an individual who was not employed by the district and that it would have been inappropriate to do so.

At the time of the parent's request (and to date), the student's educational record did not contain any report generated by the outside evaluator, and the teacher was not in possession of contact information for the individual in question.
Special education laws and regulations do not require the district to provide the parent with contact information for an outside party.

A violation of special education laws and regulations is not substantiated on this issue.

Issue Two: The district has failed to provide the parent with copies of educational records.

The Family Educational Rights and Privacy Act (FERPA) of 1974, as amended (2009) and Federal and State special education laws and regulations require schools to have reasonable policies in place to allow parents to review and inspect their child's education records. An education record means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Education records may include, but not limited to:

- academic work completed and level of achievement
- attendance data
- scores and test protocols of standardized intelligence, aptitude, and psychological tests and interest inventory results
- health data
- family background information
- information from teachers or counselors
- observations and verified reports of serious or recurrent behavior patterns
- IEPs
- documentation of notice and consent

FERPA allows parents to inspect and review all education records of their children maintained by an educational agency that receives Federal funds. The school must comply with a request to inspect education records without unnecessary delay. Even if a delay is necessary, a school must make education records available for inspection and review within 45 days after the parents request to review the records. In addition, a school must comply with a parent's request to review education records before any IEP meeting, due process hearing, or resolution session takes place.

Records should be in a location that: (a) parents can find; (b) is maintained during normal business hours; and (c) is not physically inaccessible (downstairs or upstairs, with no elevator available). Upon request, someone who can interpret or explain the records should be available to the parents. Parents may also request that copies of their child's education records be made for them. However, a school is required to provide copies of educational records only if failure to provide those copies would effectively prevent the parent from exercising the right to review and inspect the records. If, for example, a parent does not live within a reasonable driving distance from the school, the school may need to provide a copy of the requested records. If copies are provided schools may charge a reasonable fee and may take a reasonable time to provide the copies to the parents. In cases where failure to provide copies of records would effectively prevent a parent from exercising the right to inspect and review education records, and the parents are unable to pay the fee, the school must provide the records without charge.

Meeting Notes

The parent asserts that on January 17, 2018 she sent an email requesting a copy of notes taken during a January 9, 2018 IEP Team meeting. The parent states that the school psychologist did not respond in any way to her request, and, according to the parent, an email response from the general education teacher did not specifically address the request made by the parent.

The parent reports that the Assistant Director sent the parent an email on January 25, 2018 stating that the parent would have to come in for an "additional" meeting in order to obtain the notes she requested. That meeting was held on February 9, 2018.

In a telephone conversation with the investigator on February 13, 2018, the parent confirmed that she was given a copy of the January 2018 meeting notes at the February 9th meeting.

The parent received a copy of the meeting notes within 23 days of her request. Under these circumstances, a violation of special education laws and regulations is not substantiated on this aspect of this issue.

IEP

Federal regulations, at 34 C.F.R. 300.322(f)), require that a parent be provided with a copy of their child's IEP at no cost.

In a telephone call with the investigator on February 5, 2018, the parent stated that she had not yet received a copy of the IEP developed for the student on January 9, 2018. While this aspect of this issue was not included in the parent's written complaint, the Assistant Director – in a telephone conversation with the investigator on February 12, 2018 – agreed to include this issue in this complaint.

An IEP Team meeting for this student was held on January 9, 2018. The district presented the parents with a draft IEP which was discussed and modified. The parent left the meeting without receiving a copy of the modified draft. There appears to have been some confusion among district staff as to whether the IEP was actually complete and who was to be responsible for providing the parent with a copy of the document. On January 17, 2018, staff received an email from the parent expressing concern about IEP present levels and goals for reading and concluded that the IEP had not yet been finalized.

On February 9, 2018, the team held what the district believed to be a continuation of the January 2018 IEP Team meeting. Additional changes were made to the January Draft IEP. A copy of the (finalized) February 9, 2018 IEP was mailed to the parent on February 13, 2018.

In the opinion of this investigator, the team did not come to consensus and finalize the student's IEP at the January 9, 2018 IEP Team meeting. The parent left that meeting with a copy of the district's original draft IEP but did not receive a copy of any revised document. On January 17, 2018, the parent provided feedback to staff via email regarding her concerns with elements of the draft IEP. A follow-up IEP Team meeting was held on February 9, 2018, and the student's IEP was finalized. The parent was in a timely fashion mailed a copy of that IEP on February 13, 2018. Under these circumstances, a violation of special education laws and regulations is not substantiated.

Issue Three: An outside agency staff member shared information regarding the student with the district without first obtaining the written consent of the parent for the release of information.

The parent contends that a psychologist employed by the Mental Health Center shared information regarding the student with district staff without first obtaining a signed release of information from the parent.

Confidentiality of ***educational records*** is a basic right shared by all students in public schools and their parents. These fundamental rights are described in the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended (2009).

Confidentiality regulations apply to the State and to all public schools and private schools that accept federal funds. In addition, all school personnel (including contracted employees) are governed by confidentiality requirements of FERPA and the Individuals with Disabilities Education Act (IDEA), which apply to students with disabilities.

As an employee of the Mental Health Center, the actions of the psychologist with regard to the release of information to school district personnel are not covered under FERPA or the IDEA but rather by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA is United States legislation that provides data privacy and security provisions for safeguarding medical information.

Complaints regarding a violation of rights covered under these regulations should be filed with the U.S. Department of Health and Human Services Office for Civil Rights (https://www.hhs.gov/hipaa/filing-a-complaint/index.html).

Because the actions of the Mental Health Center employee are not covered by special education laws and regulations, this issue was not investigated.

Issue Four: The district changed the student's disability designation without sufficient supporting data and without first obtaining the consent of the parent.

Kansas regulations, at K.A.R. 91-40-10(a)(1)(A), require that an evaluation report for initial placement in special education includes a statement as to whether the child has

an exceptionality. These regulations do not require that the evaluation report include the particular category of exceptionality in which a child has been identified.

However, no information should be withheld from parents. It is important that parents be informed of the particular category of exceptionality in which eligibility for special education was determined, and which is reported by the school to the state through the Management Information System (MIS). In a court case where the school did not inform the parents that the special education evaluation identified their child as having autism, the United States Circuit Court of Appeals said:

> *Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. . . . These procedural violations, which prevented (*the student's) *parents from learning critical medical information about their child, rendered the accomplishment of the IDEA's goals –and the achievement of a FAPE –impossible. Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892, 894 (9th Cir. 2001).*

In essence, this court said that the IEP team could not create a valid IEP that addressed the child's unique needs if required members of the team (the parents) were not fully informed of the evaluation results, which indicated their child had autism. Although this court did not address it, when a parent is not fully informed of the results of an evaluation, it is also likely that any consent given by the parent will be deficient. For these reasons, it is recommended that the evaluation report include the specific category of exceptionality in which a child is identified as an exceptional child. If the category of exceptionality is not identified in the evaluation report, it is important that school personnel document in some other way that the parents have been informed of this important information.

Special education laws and regulations do not require districts to obtain parental consent before establishing or changing a student's category of exceptionality. If such a change is made, however, districts are required to provide the parent with notice of that change.

The parent contends that on January 9, 2018 the district proposed a change to the student's exceptionality category from Other Health Impaired (OHI) to Emotional Disturbance (ED) without her permission. The parent states that the decision to make this change was based on inadequate data and was made without due consideration of her assertion that the student should be diagnosed as falling on the Autism Spectrum.

According to both the parent and the Assistant Director, the parent's concerns were discussed at a subsequent meeting on February 9, 2018, and a decision was made to collect more data before determining any change to the student's categorical designation. The team agreed to reconvene on February 26, 2018 to review newly collected data.

At the February 26, 2018 meeting, the team considered additional information provided by the parent and the student's therapist. That information was added to the evaluation report. The team also discussed whether or not the student should be determined eligible for special education services under the exceptionality category of Autism. The team determined that there was not a preponderance of evidence to support an Autism designation but did decide to maintain the student's current exceptionality designation of Other Health Impaired.

Although a possible change to the student's exceptionality category designation was discussed by the team, no change was made and no notice of change is therefore warranted. Under these circumstances, a violation of special education law and regulations is not substantiated.

Corrective Action

Information gathered in the course of this investigation did not substantiate noncompliance with special education laws and regulations on an issue presented in this complaint. Therefore, no corrective action is warranted.

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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Diana Durkin, Complaint Investigator

(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)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SERVICES

REPORT OF COMPLAINT
FILED AGAINST
_____ PUBLIC SCHOOLS #___
ON JANUARY 31, 2018

DATE OF REPORT: MARCH 8, 2018

This report is in response to a complaint filed with our office on behalf of _____ by his parents, _____ and ___ _____. _____ will be referred to as "the student" in the remainder of this report. Mr. and Mrs. _____ will be referred to as "the parents."

The parents filed two complaints with the Kansas State Department of Education. The first was received on January 30, 2018, the second on January 31, 2018. The parents have agreed to have their issues addressed in a single report combining issues from both complaints.

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with _____, Director of Special Education for USD #___, on February 8, 2018. On February 8, 12, 22, 27, and 28 and March 1, 2018 the investigator spoke by telephone with the Assistant Director of Special Education, Lori Stithem. The investigator spoke by telephone with the parent on February 6 and 8 and March 6, 2018.

In completing this investigation, the complaint investigator reviewed the following material:

- IEP for this student dated October 6, 2016
- Email dated February 3, 2017 requesting IEP progress update
- Email dated October 11, 2017 from Occupational Therapist (OT) to the IEP Team regarding the student's progress on his fine motor and visual perceptual goal
- Email dated October 23, 2017 from the former special education teacher to the parent
- Email exchanges dated December 19 – 21, 2017 between the parent and the regarding benchmark assessment
- Email dated January 4. 2018 from parents to the school notifying the district of the student's withdrawal from school and requesting records
- Email exchanges dated January 10, 2018 between the School Psychologist and the parents regarding the student's IEP and progress monitoring
- Email dated January 11, 2018 from the parents summarizing previous discussions and emails related to progress monitoring/reporting and IEP development

- Email exchanges dated January 11, 2018 between the special education teacher and the parents
- Proposed IEP for the student dated January 12, 2018
- Student work samples provided by the parents
- Complaint paperwork and accompanying documentation submitted by the parents

Background Information

This investigation involves a 12-year-old boy who was enrolled in the 6th grade at the _____ Virtual School (_VS). The student and his parents reside in Shawnee, Kansas.

The student has a significant medical history. He has a large cyst in his brain and has been diagnosed with a number of conditions including:

- Autism
- ADHD
- Juvenile Arthritis
- Autonomic Dysfunction
- Shapiro Syndrome – an extremely rare disorder resulting in paroxysmal (with sudden recurrence or intensification of symptoms) hypothermia, sweating, and agenesis (failure to develop normally) of the corpus callosum
- Corpus Callosum Disorder – a disorder affecting the broad band of nerve fibers joining the two hemispheres of the brain
- Balint Syndrome – a triad of neuropsychological symptoms including inability to perceive the visual field as a whole, difficulty in fixating the eyes, and inability to move the hand to a specific object by using vision
- Optic Ataxia – a component of Balint Syndrome
- Food allergies
- Visual processing disorder
- Hearing processing disorder

The student first enrolled in _VS in the fall of 2016. The IEP developed on October 6, 2016 stated that he would receive 60 minutes of direct special education services one time per week via an online classroom, 15 minutes of indirect special education services one time per month, 30 minutes of direct support from an Occupational Therapist once a week and 60 minutes of direct speech/language services in a 1:1 setting once a week. The IEP contained one math-related goal, one reading-related goal, two writing-related goals, one language goal, one speaking/listening goal, and a visual and motor perceptual goal.

At the start of the 2017-18 school year, a new special education teacher was assigned to the student's case. That teacher was placed on FMLA (Family and Medical Leave Act) medical leave on October 24, 2017 after a brief absence from work. A new special education teacher was assigned to provide services to the student.

An annual review of the student's IEP was scheduled near the time of the change in teacher assignments. In an IEP Team meeting on October 26, 2017, the parents were introduced to the student's new teacher. The team discussed revisions to the student's IEP as well as proposed changes in services, and the decision was made to continue to provide services to the student as outlined under his October 2016 IEP. It was determined that new data would be collected before a new IEP was finalized.

Issues

Issues raised in the parents' complaint relate to actions taken by the district over the period beginning October 6, 2016 to January 31, 2018. Kansas regulations, at K.A.R. 91-40-51(b), state that a complaint must allege a violation that occurred not more than one year before the date the complaint is received and filed with the commissioner of education. This investigation will only address facts associated with district actions during the period beginning January 30, 2017. However, because the IEP developed for this student on October 6, 2016 remains in effect, allegations related to some aspects of the development and implementation of that IEP are addressed herein.

The parents have raised a total of four issues in their complaints.

Issue One: The Occupational Therapist (OT) failed to comply with legal requirements for the development of measurable goals, objectives, and/or Benchmarks for all areas of weakness.

The IDEA includes numerous IEP requirements. Federal regulations, at 34 C.F.R. 300.320, provide a definition of an IEP (Individualized Educational Program). At 34 C.F.R. 300.320 (a)(2)(i), the regulations state that a student's IEP must include a statement of measurable annual goals and – for children with disabilities who take alternate assessments aligned to alternate achievement standards – a description of benchmarks or short-term objectives. These same regulations, at 34 C.F.R. 300.320(a)(3)(i), require the IEP to include a description of how the child's progress toward meeting the annual goals will be measured.

Measurable annual goals are descriptions of what a child can reasonably be expected to accomplish within a 12-month period with the provision of special education (specially designed instruction) and related services. The annual goals included in each child's IEP should be individually selected to meet the unique needs of the individual child.

Well written annual goals which meet the requirements in 34 C.F.R. 300.320(a)(2) and (a)(3), contain four key components:

- Timeframe: the point by which the student is expected to attain the goal
- Conditions: the manner in which progress toward the goal is measured
- Behavior: the performance that is being monitored
- Criterion: how much, how often, or to what standards the behavior must occur in order to demonstrate that the goal has been reached

A well written annual goal will pass the “Stranger Test” – an evaluation of a goal to determine if it is written in such a manner that an implementer who does not know the student could use it to develop appropriate instructional plans and assess the child’s progress.

The law does not require an IEP team to address every area of need a student may demonstrate nor does it require that every condition under which a behavior might be measured be specified.

The law requires that benchmarks or short term objectives be developed only on the IEP of a child with a disability who takes an alternate assessment aligned to alternate achievement standards (34 C.F.R. 320(a)(2)(ii)). However, this requirement does not prohibit the development and use of benchmarks or short term objectives to measure progress toward meeting the measureable annual goal for any child with an exceptionality (Federal Register, August 14, 2006, p. 46663).

Benchmarks are major milestones that describe content to be learned or skills to be performed in sequential order. They establish expected performance levels that coincide with progress reporting periods for the purpose of gauging whether a child’s progress is sufficient to achieve the annual goal. Benchmarks measure intermediate progress toward the measurable annual goal.

Short-term objectives are measurable, intermediate steps between a child's baseline data in the present level and the annual goal, with the conditions under which the skill is to be performed, the behavior to be observed, and the criteria for success. A short-term objective follows the same pattern of the goal, with a shorter timeframe and intermediate criteria to be attained. The goal and short-term objectives establish how child outcomes will be measured. Diagnostic assessment will provide the information needed to develop an instructional plan for achieving the goals and objectives.

The current (October 2016) IEP for this student contains one annual goal for which the OT was responsible as follows:

> “By September 2016 (sic), (the student) will achieve the following fine motor and visual perceptual goals with 80% accuracy.”

Three benchmarks were developed in conjunction with this goal. They are as follows:

- “(The student) will complete a classroom writing assignment (journal, worksheet, etc.) with 80% accuracy for letter formation, letter size and spacing.”
- (The student) will complete visual perceptual activities (word searches, mazes, dot-to-dot) with 90% accuracy.
- (The student) will copy text (writing or typing) from near point with 90% accuracy.”

The parents assert that the benchmarks established for this goal in October 2016 are insufficiently specific and measureable. It is their position that the OT declined to modify these benchmarks in response to the parents' expressed concerns that they did not as they were written specifically reflect accommodations included in the student's IEP.

The parents contend that when addressing parents' questions regarding the development of a proposed revision to the students October 2016 IEP, the OT did not provide specific information regarding the student's pain with writing, time to complete tasks, fading of visual perception activities, or typing.

The annual goal referenced in this aspect of the complaint contains the following elements:

- Timeline: By September 2016
- Behavior: will achieve the following fine motor and visual perceptual goals
- Criterion: with 80% accuracy

Special education laws and regulations do not require that a "measurable" annual goal be developed for every identified need a student may have. Further, there is no legal requirement that ***every*** condition under which a goal might be measured be included in a student's IEP. However, the OT goal as written in the student's October 2016 IEP includes ***no*** conditions. Thus, this OT goal does not meet the regulatory requirement for describing how the child's progress toward meeting the annual goal will be measured. Although it is possibly only a typographical error, the IEP also specifies a timeline one month prior to the time the IEP was written. Accordingly, this goal lacks key elements needed to ensure that it is both "measurable" and that there is a description in the IEP of how it will be measured. Therefore, a violation of special education laws and regulations is established on this issue.

Issue Two: The district has failed to implement the IEP as written.

Federal regulations, at 34 C.F.R. 300.101 require public schools to make a free appropriate public education (FAPE) available to children with disabilities. At 34 C.F.R. 300.17, the regulations define FAPE, in part, as special education and related services provided in conformity with an IEP.

The parents allege that services have not been provided to the student as written in his October 2016 IEP. The parents point to six specific examples:

1. The Occupational Therapist (OT) did not use classroom writing activities to assess proficiency with regard to his fine motor and visual perceptual goal;
2. The OT did not use classroom curricular materials to evaluate student progress;
3. The OT did not use a scoring rubric to evaluate writing samples collected during her sessions with the student;

4. The OT failed to use a specified scoring rubric to assess progress on a writing goal at each progress reporting period;
5. The special education teacher failed to administer writing probes as specified in the student's IEP; and
6. The special education teacher did not assess progress on a spelling-related goal in the manner specified in the student's IEP.

Use of Classroom Writing Activities by OT

The first benchmark measure for the fine motor and visual perceptual goal in the student's October 2016 IEP (which is monitored by the OT) states:

> "(The student) will complete a classroom writing assignment (journal, worksheet, etc.) with 80% accuracy for letter formation, letter size and spacing."

The second and third benchmarks for the OT goal make no reference to "classroom writing assignments."

The parents assert that the OT did not use samples from classroom writing assignments to assess student progress on this benchmark. The parents also contend that the OT never worked with the student using a monitor and keyboard (instead only using an iPad).

Evidence discovered in this investigation supports the district's contention that the OT did use a classroom writing assignment to assess this benchmark. Treatment notes taken by the therapist on October 5, 2017 state, "HW activity from writing prompts. Student copies beginning of sentence, then writes 4 (average) 10-word sentences with 95% accuracy for letter formation, line regard, and spacing."

As written, this benchmark does not specify the type of writing assignment, the time required for completion, or the equipment to be utilized in demonstrating the skill.

Evidence has been presented to show that the OT did use classroom writing assignments to judge the student's proficiency with this benchmark. Therefore, a violation of special education laws and regulations is not substantiated with regard to this aspect of this issue.

Use of Curricular Materials by the OT

As stated above, the first benchmark measure for the fine motor and visual perceptual goal in the student's October 2016 IEP (which is monitored by the OT) states:

> "(The student) will complete a classroom writing assignment (journal, worksheet, etc.) with 80% accuracy for letter formation, letter size and spacing."

The parents allege that that the OT did not access the student's curriculum. It is their position that in order for the OT to work on this goal, she would need to have access to his online curriculum, and the OT reported in an October 2017 meeting that she did not have that access. The parents further assert that the OT's failure to use curricular materials led to inaccuracies in data collection that resulted in the reporting of erroneous conclusions regarding the student's progress.

The benchmark as written does not specify any given type of curricular material to be used in instructing the student or in assessing his progress. As stated in the section above, evidence presented by the district indicates that the OT did use classroom writing assignments to judge the student's progress. Under these circumstances a violation of special education laws and regulations is not substantiated on this aspect of this issue.

Use of a Scoring Rubric by the OT

As stated above, the first benchmark measure for the fine motor and visual perceptual goal in the student's October 2016 IEP (which is monitored by the OT) states:

> "(The student) will complete a classroom writing assignment (journal, worksheet, etc.) with 80% accuracy for letter formation, letter size and spacing."

The parents assert that the OT failed to use a rubric when assessing the student's progress toward attainment of this benchmark. It is the parent's position that the curriculum used with the student (Handwriting Without Tears) is paired with a "universal Measurement Tool" that provides guidance on how a student's writing skills should be evaluated.

The benchmark as written does not require the use of a rubric – or the "universal Measurement Tool" – to assess progress. Under these circumstances, a violation of special education laws and regulations is not substantiated on this aspect if this issue.

Use of Scoring Rubric to Assess Student Progress on Written Assignments

One of the two writing goals included in the student's October 2016 IEP reads as follows:

> "By October 2017, when given a writing probe, (the student) will write a 4-paragraph paper, that includes a (sic) introduction paragraph, supporting paragraphs and a concluding paragraph scoring 80% or higher ***using a teacher rubric*** (emphasis added)."

The parents contend that the teacher did not use a rubric to judge the student's performance.

The district stipulates that it can provide no evidence of the use by the teachers during the 2017-18 school year of a writing rubric with aligned percentage criterion.

Because the district failed to monitor this writing goal using a rubric as specified in the student's October 2016 IEP, a violation of special education laws and regulations is substantiated on this aspect of this issue.

Use of Writing Probes

The parents assert that probes were to be administered to the student with regard to the above-mentioned writing goal in February, May, and October of 2017. It is the parents' assertion that these probes were not administered at each of the designated times.

The district did not provide evidence that writing probes were administered to assess student progress toward mastery of this goal. Under these circumstances, a violation of special education laws and regulations is established on this aspect of this issue.

Spelling Data

A second writing-related goal in the student's October 2016 IEP focused on spelling as follows:

> "By October 6, 2017, when given a randomly selected 2 minute 4th grade spelling CBM probe, (the student) will write 67 correct letter sequences and 12 correct words, over 3 data collection days."

The parents contend that data for this goal was not collected as required by the IEP.

According to documents provided by the district, the student's progress toward mastery of this goal was monitored in February of 2017. The progress report provided by the district shows the student was making adequate progress on this goal in February. He wrote 52 correct letter sequences at that time and spelled 3 words correctly. However, the May monitoring report shows that the skill was "not yet introduced."

The district stipulates that no data was collected on this goal for any monitoring period beyond February 2017. Under these circumstances, a violation of special education laws and regulations is established on this aspect of this issue.

Issue Three: The district failed to monitor, document, and report the student's progress to parents in the manner established in the student's IEP.

The IEP must include a description of when parents will be provided periodic reports about their child's progress toward meeting the annual goals. An example might be through the use of quarterly or other periodic reports concurrent with the issuance of district report cards (K.S.A. 72-987(c)(3); 34 C.F.R. 300.320(a)(3)). The reporting may be carried out in writing or through a meeting with the parents (including documentation

of information shared at the meeting), whichever would be a more effective means of communication. Whatever the method chosen, child progress toward the goals must be monitored in the method indicated on the IEP and progress reports should include a description of the child's progress toward his/her measurable annual goals.

Each of the seven annual goals in the student's October 16, 2016 IEP include the following statement:

> "Parents will receive written reports of the student progress toward meeting annual IEP goals in accordance with the district's established grade reporting schedule."

The district reports grades to parents of brick and mortar middle school students (grades 6-12) on a quarterly basis in October, December, March, and May of each school year. Progress is reported to parents of brick and mortar elementary school students (grades K-5) in November, February, and May. For students who are enrolled in _VS, grades are reported twice yearly at the end of each semester.

Of the seven goals in the student's October 2016 IEP, six were written to end in October 2017. One was written to end in September of 2017. Four goals included short term objectives which specified that data would be taken in February and May of 2017. Another goal included short term objectives which specified that data would be taken in November of 2016 as well as February, May, and October of 2017. One goal included a set of benchmark measures which specified these same four data points (November 2016 and February, May and October 2017). The seventh goal specified three benchmark measures but did not include any reference to data dates.

Revision of the student's October 2016 IEP had not been completed prior to the withdrawal of the student from the _VS in January 2018. Until the IEP was revised, the goals established in October 2016 would remain in place and progress on those goals should have been monitored at the end of the first semester of the 2017-18 school year.

The parents contend that they made repeated email and verbal requests for IEP progress reports but either did not receive those reports in a timely manner or did not receive some of them at all. They state, for example, that that they received February 2017 progress reports from the Occupational Therapist in May of 2017 and received May progress reports from the OT in August of 2017.

The parents state that they received no report of progress for 5 of the student's goals for the first quarter of the 2017-18 school year. According to the parents, only the student's Speaking/Listening goal and his Language goal was monitored (by the Speech/Language Pathologist) in October 2017.

The parents state that they were given no report of the student's progress in December of 2017 and no progress reports had been provided by the time the student left the district in January 2018.

Parents also assert that they did not receive any report of progress for the extended school year (ESY) session.

Records provided by the district support the parents' contention that progress toward the attainment of the student's speaking/language goal and his language goal was measured in February, May, and October of 2017. There is no indication that data was taken or that progress was reported to the parents for December 2017.

Records indicate that the student's fine motor and visual perceptual goal was monitored in February and May of 2017. No monitoring was completed during the first semester of the 2017-18 school year.

Progress was reported only twice for the four remaining goals – in February and May of 2017.

The district stipulates that communication with parents of students at _VS regarding grade reporting may not establish clear expectations concerning when reporting of progress toward mastery of special education goals will be provided. The district further stipulates that this student's progress was not monitored or reported to the parent as stated in his IEP and as required by special education laws and regulations.

A violation of special education laws and regulations is established on this issue.

Issue Five: Parents were not in a timely manner provided with Progress Reports when the student was withdrawn from the district.

At K.A.R. 91-40-4(c), special education regulations require that "the most recent individualized education program, as well as any additional educationally relevant information concerning the child, shall be forwarded immediately to the receiving school district."

The parents state that the district failed to provide completed progress reports when notified of the student's withdrawal.

According to the complaint, the student was withdrawn from the _____ Virtual School on January 4, 2018. The district was notified that the student would be transferring to the Griffin Midwest Academy located at the same address as the student's residence.

On January 10, 2018, the School Psychologist sent an email to the parents attaching a copy of a proposed IEP for the student which had not yet been adopted. The email noted that "a hard copy (would) be mailed" to the parents as well. The parents responded via email on the morning of January 11, 2018, stating that the document sent by the School Psychologist had not yet been agreed to by the IEP Team and did not contain parent input. The parents requested a copy of the last agreed upon IEP (developed on October 6, 2016)

and related progress reports. The School Psychologist then sent the October 2016 IEP to the parents via email later that morning.

The parents again emailed the School Psychologist on January 11th stating that the October 2016 IEP they had received did not contain fourth quarter monitoring of that IEP. Parents asked that any data collected with regard to the student's progress toward goals established in the 2016 IEP be reported – specifically "Lexia Reports and…Keyboarding Without Tears reports…"

The special education teacher sent an email to the parents on the afternoon of January 11, 2018 stating that she could not provide progress reports for the October 2016 IEP for the fourth quarter period because she did not have available any relevant data from that time period.

A review of evidence associated with this complaint has led the investigator to conclude that the district has provided the parents with all the monitoring information it had in its possession at the time the student was withdrawn from the _____ Virtual School. As substantiated above, the district failed to appropriately monitor the student's October 2016 IEP at several points, including October and December of 2017. Having failed to monitor the student's progress on goals outlined in the student's October 2016 IEP, no additional monitoring reports are available to provide to the parents.

The district in a timely manner provided the parents with all available information. Under these circumstances, a violation of special education laws is not substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, violations were substantiated with regard to

- 34 C.F.R. 300.320 (a)(2)(i) which requires that a student's IEP contain measureable annual goals;
- 34 C.F.R. 300.320(a)(3)(i) which requires that an IEP include a description of how the child's progress toward meeting the annual goals will be measured;
- 34 C.F.R. 300.101 which requires that a student be provided with FAPE in the manner specified in his/her IEP; and
- K.S.A. 72-987(c)(3) and 34 C.F.R. 300.320(a)(3) which require that parents be provided with reports of their child's progress toward attainment of his/her annual goals

Therefore, USD #___ is directed to take the following actions:

1) Submit, within 20 days of the receipt of this report, a written statement of assurance to Special Education Services stating that it will comply with

    a. 34 C.F.R. 300.320 (a)(2)(i) by developing measurable annual goals for students;

    b. 34 C.F.R. 300.320(a)(3)(i) which requires that an IEP include a description of how the child's progress toward meeting the annual goals will be measured;

    c. 34 C.F.R. 300.101 by implementing the IEP for this and other students as written; and

    d. K.S.A. 72-987(c)(3) and 34 C.F.R. 300.320(a)(3) by providing parents with progress reports in the manner specified in each student's IEP.

2) By no later than March 30, 2018, submit to Early Childhood, Special Education and Title Services a plan for the training of staff at the _____ Virtual School regarding the following:

    - development of measurable annual goals and a description of how those goals will be measured
    - implementation of goals and benchmarks/short term objectives as written
    - monitoring of benchmarks and short term objectives
    - reporting to parents of the progress of students toward the attainment of annual goals

3) Within one week of the provision of the training outlined above in Item 2, provide to Early Childhood, Special Education and Title Services an agenda for each training session and a list of attendees.

4) By no later than March 30, 2018, submit to Early Childhood, Special Education and Title Services a plan for the provision of information to parents of students enrolled at _VS regarding the monitoring and reporting of progress toward attainment of IEP goals.

5) Within 10 school days of the date of this report, schedule an IEP meeting at a mutually agreed upon time to rewrite the student's OT goal to conform with legal requirements relating to how the student's progress on that goal will be measured and to correct the timelines on which the goal is to be reported and met. The parents have the right to elect not to attend this meeting, particularly because the student is no longer enrolled in the district. If the parents elect to not attend this

meeting, the district shall provide the parents with two notices in two different forms, and hold the meeting without the parents. At the conclusion of this meeting, the district shall send Early Childhood, Special Education, and Title Services a copy of the Prior Written Notice specifying the changes made to the IEP at this meeting.

6) Within 10 school days of the date of this report, the district shall provide the parents with a Prior Written Notice proposing to conduct a re-evaluation of the student to assess the student's progress on his writing goals, and request parent consent for this re-evaluation. A copy of the Prior Written Notice and any consent provided by the parent shall be sent to Early Childhood, Special Education and Title Services.

Further, USD #___ shall, within 10 calendar days of the date of this report, submit to Early Childhood, Special Education and Title Programs one of the following:

a) A statement verifying acceptance of the corrective action or actions specified in this report;

b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (c).

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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____
Diana Durkin, Complaint Investigator

(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).

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON FEBRUARY 14, 2018

DATE OF REPORT: MARCH 16, 2018

This report is in response to a complaint filed with our office by ____ _____ on behalf of her daughter, _____ _____. In the remainder of this report, _____ _____ will be referred to as "the student" while _____ _____ will be referred to as "the mother" or "the parent."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ by telephone on March 6, March 7, and March 9, 2018. USD #___ made the following staff persons available to be interviewed:

- _____, Director of Special Education
- _____, Principal at _____ Middle School
- _____, Special Education Coordinator for _____ Special Education Cooperative
- AK, Special Education Teacher at _____ Middle School
- SB, School Social Worker at _____Middle School
- _____, School Psychologist at _____ Middle School
- _____, Assistant Principal at _____ Middle School
- _____, Special Education Teacher at ____ Middle School
- _____, Speech/Language Pathologist at _____ Middle School

At the mother's request, the Complaint Investigator interviewed the following staff from the Parent and Child Empowerment Services (PACES) on March 7, 2018:

- Lynn Barnett, Manager
- Debbie Aguilar, Wrap Around Facilitator
- Martha Tandara, School-based Therapist
- Taylor Collier, Case Manager

The Complaint Investigator also interviewed the mother by telephone on February 20, March 14, and March 15, 2018 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Reevaluation Summary Report dated May 1, 2017
- Individual Education Program (IEP) amendment dated May 19, 2017
- Prior Written Notice (PWN) for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated May 19, 2017
- IEP Meeting Summary dated October 19, 2017
- PWN for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated October 19, 2017
- IEP dated November 17, 2017
- PWN for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated November 17, 2017
- IEP Meeting Summary dated January 8, 2018
- IEP Meeting Summary dated February 6, 2018
- School Calendar for the 2017-18 school year
- Copy of Life Skills III classroom schedule at ____ Middle School
- Copy of Life Skills III classroom schedule at ____ Middle School
- Class Roster for Computer Applications elective class at ____ Middle School
- Social Work Log of services provided during the 2017-18 school year
- Behavior Logs for the 2017-18 school year
- Student Discipline Record for the student
- Attendance record for the student for the period August 11, 2017 through February 26, 2018
- Field Trip Permission form for the movie, “Wonder”

Background Information

This investigation involves a 12-year-old girl who is enrolled as a sixth grade student in USD #___. Records indicate the student has attended USD #___ and received special education services since preschool. The most recent reevaluation of the student was conducted on May 1, 2017 and the team members determined the student continued to be eligible for special education and related services under the eligibility category of Intellectual Disabilities and Speech/Language Impairment.

Issues

The complainant raised three issues which were investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the complaint is received. In this case, the parent's allegations only cover the time period during the 2017-18 school year which began on August 11, 2017 through the present.

> **ISSUE ONE:** The USD #___ and the _____ Special Education Cooperative, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically by not providing the special education services and the required accommodations/modifications during the 2017-18 school year.

Findings:

Interviews with the mother and the PACES staff found she was specifically concerned that the _____ Middle School did not provide the student with the same level of special education services and supports for behavior that had been provided the previous school year during fifth grade at _____ Elementary School. The mother believes this lack of services resulted in a rough transition to middle school.

The mother did not share any concerns with the provision of related services to the student. The mother did not indicate any specific accommodation or modification that was not implemented but rather referred to the lack of follow-through by staff in following the behavior intervention plan (BIP) when dealing with the student's behaviors resulting in frequent calls to the mother and the student being sent home.

The mother believes staff at ____ Middle School did not want her daughter to attend their school because of her behaviors. The mother believes this is the main reason the student was transferred from her neighborhood school, ____ Middle School, to ____ Middle School on January 17, 2018.

The mother also expressed concerns that USD ___ only gave her a choice of middle school program options at IEP team meetings rather than developing an IEP individualized to meet the student's needs. The mother indicated she was under the impression her daughter was assigned to a Level II Life Skills Class not a Level III Life Skills Class and expressed concerns that school staff did not communicate things more clearly during the IEP team meetings this school year.

Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education available to all children residing within the district. 34 C.F.R. 300.17 defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

Federal regulations, at 34 C.F.R. 300.320, require an IEP be developed to meet the unique needs of each student requiring special education. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior and, for children for whom a BIP is developed, the BIP must be included in the IEP.

Federal regulations, 34 C.F.R. 300.116, require the educational placement of students with disabilities be determined annually based upon the needs of the student as described in the IEP and be in the least restrictive environment. State regulations, at K.A.R. 91-40-1(t), states that educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school.

The Office of Special Education Programs (OSEP) further clarified “as close as possible to the child’s home” in Letter to Trigg (11/30/2007) which stated “*Historically, we have referred to placement as points along the continuum of placement options available for a child with a disability and location as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child’s special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination consistent with the decision of the group determining placement”*.

Federal regulations, at 34 C.F.R. 300.503, require that written notice must be given to parents when the responsible public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action.

In this case, the first IEP in effect for the student during the 2017-28 school year was the IEP developed at the annual IEP review on December 7, 2016 and amended on May 19, 2017. This amended IEP required the following services

be provided to the student through a Level III Life Skills classroom in the middle school setting:

- Specialized instruction in the special education setting for a total of 1,160 minutes per week as follows:
  - 270 minutes twice per week
  - 245 minutes per week
  - 240 minutes per week
  - 135 minutes per week

This amended IEP included a BIP which listed environmental supports including a visual schedule of alternative activities, scheduled time out of classroom, time off of recess for elopement, and frequent check in's with parent to increase compliant behavior in the classroom.

The parent was provided with a Prior Written Notice (PWN) for Change in Identification, Initial Services, Educational Placement, Placement, Change in Services and Request for Consent for these services on May 19, 2017. This PWN shows the parent signed consent on May 19, 2017 for these changes to occur at the beginning of the 2017-18 school year.

The IEP team met again on October 19, 2017, during a phone conference to review the effectiveness of the BIP. The Meeting Summary indicates that the student had missed over 37 hours of instruction since September 6, 2017 due to extended breaks from the classroom. The BIP was changed to provide the student with a task management sheet with five minute breaks earned for completing a task. Once all tasks have been completed, the student would earn a 10 minute break with a preferred adult. A PWN for this change was sent home to the parent with the student following the IEP team meeting.

The IEP team meeting to annually review and revise the IEP was held on November 17, 2017. This IEP required the following services be provided to the student:

- Changed the amount of specialized instruction in the special education setting from 1,160 minutes per week to a total of 1,215 minutes per week as follows:
  - 270 minutes four days per week
  - 135 minutes one day per week

No changes were made to the BIP at this IEP team meeting.

The parent was provided with a PWN for Change in Identification, Initial Services, Educational Placement, Placement, Change in Services and Request for

Consent for these services on November 17, 2017. This PWN shows the parent signed consent on November 17, 2017 for these changes to occur immediately.

Documentation shows an IEP meeting was held on January 8, 2018 to review/revise the IEP dated November 17, 2017. The Meeting Summary reflects discussions regarding the increase in behavior problems at _____ Middle School despite multiple interventions. The Meeting Summary shows the Special Education Coordinator recommended discussion on changes to placement and/or location and that the Principal at ____ Middle School presented options which included reassignment to another Level III Life Skills classroom at either ____ Middle School or ____ Middle School for a fresh start in a school with additional support being available or a change of placement and services to the emotionally disturbed (ED) program which could provide more resources and more 1-1 assistance to the student.

The notes state "*Coordinator explained fresh start may be beneficial so there are no previous expectations so that they can build rapport. Social worker said she would be uncomfortable with an ED setting but programs at ____ and _____ were good. Mom says she [the student] will not come back at_____."* Documentation shows that no changes to the level of services in the special education setting were made at the IEP meeting and only the change of location to provide the services and placement in a Life Skills III classroom at mother's choice of either _____ or ____ Middle School.

Documentation shows the parent chose ____ Middle School and that the IEP team met on February 6, 2018 to review the IEP. The Meeting Summary indicates the team discussed "*how minutes are delivered*" and indicated the team would meet again "*to create new PWN."* The mother indicated the school staff did not want to make any changes to the IEP for 30 days so they could get to know the student. The mother reported being told the student would receive all of the same services she had been receiving and there would be support in the elective classes in the afternoon because a special education staff was already assigned to those classes. The mother also stated that another IEP meeting has not been held to date.

Documentation and interviews found the following information regarding the implementation of the previously described IEPs during the 2017-18 school year:

<u>August 11 – November 17, 2017</u>

The student was assigned to the Life Skills III classroom taught by Ms. K and Ms. O_____, Special Education Teachers at _____ Middle School, at the beginning of the 2017-18 school year. These teachers reported they work together as a team to co-teach the Life Skills III classroom.

The school hours for _____ Middle School are shown as 7:50 a.m. – 2:50 p.m. on Monday, Tuesday, Thursday and Fridays. On Wednesday, classes dismiss at 12:50 p.m. Lunch is 25 minutes per day. Not including lunch and passing time between classes, the teachers reported their self-contained special education class began at 7:50 a.m. and ended at 1:10 p.m. for a total of 270 minutes per day on the four full days of school. The students attend elective classes during the remainder of the school day. With the shortened class periods on Wednesday, their class provided 135 minutes per day of specialized instruction.

The teachers reported and documentation showed the student was allowed breaks out of the classroom until the BIP was amended on October 19, 2017 and the work / break schedule was established and implemented.

It is noted that the student's schedule provided 1,215 minutes per week of special education instead of the 1,160 minutes per week required by the IEP in effect during this timeframe.

November 17, 2017 – Present

The student continued to receive 1,215 minutes per week of special education instruction while still enrolled in the Life Skills III classroom taught by Ms. K and Ms. O until the end of January 2018 when the student was reassigned to ____ Middle School.

The student was assigned to the Life Skills III classroom taught by Angela Greer, special education teacher, at ____ beginning on January 17, 2018. The school hours are 7:50 a.m. – 2:50 p.m. on Monday, Tuesday, Thursday and Fridays. On Wednesday, classes dismissed at 12:50 p.m. Lunch was 25 minutes per day. Not including lunch and passing time between classes, the schedule shows the self-contained special education class begins at 7:50 a.m. and ends at 9:45 a.m. and then meets again from 11:20 a.m. until 2:50 p.m. for a total of 270 minutes per day on the four full days of school. With the shortened class periods on Wednesday, the class provides 135 minutes of specialized instruction. It is noted this schedule provides the student with the 1,215 minutes per week of specialized instruction as required by the current IEP.

The mother reports the student has been very successful since the transfer to ____ Middle School. She believes this is because the staff at ____ Middle School are implementing the BIP as written and are also providing additional special education support for the student during the elective classes in the general education setting.

During interviews, the school staff confirmed that the student was assigned to elective classes at ____ Middle School with two peers whose IEPs require special education support in the general education setting. However, school staff

reiterated that this type of support is not required by the student's IEP and the student is simply receiving incidental benefit from the support provided in the classroom for the peers.

In this case, it appears USD #___ held multiple IEP team meetings with the parent in attendance to discuss special education services and placement options based on the student's individual needs. USD #___ appears to have a continuum of special education services and placements available for students within the district. USD #___ provided the parent with appropriate PWN explaining the services and placement decisions of the IEP team following IEP team meetings and obtained consent for changes. USD #___ provided documentation that demonstrated the BIP was implemented and the placement was provided as described in the IEP. Although documentation shows USD #___ did provide the 1,215 minutes per week of special education services described in the IEP developed on November 17, 2017 in two locations within the district, USD #___ provided more than the required 1,160 minutes per week of special education as described in the student's IEP dated May 19, 2017 at the beginning of the 2017-18 school year.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to implementing the IEP as written is substantiated. Specifically, USD #___ did not provide special education in conformity with the IEP at the beginning of the 2017-18 school year by providing 1,215 minutes per week of special education instead of the 1,160 minutes per week of special education services as required by the IEP between August 11 and November 17, 2017.

ISSUE TWO: The USD #___ and the _____ Special Education Cooperative, in violation of state and federal regulation implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate discipline procedures for the student during the 2017-18 school year.

Findings:

The parent reported the student was frequently sent home from school due to behavioral issues. She noted the student was assigned multiple out-of-school suspension (OSS). In addition, she stated that the principal would frequently call her to discuss the problem behaviors and ask her to pick the student up from school early. The mother reported the student has not been sent home since her reassignment to ____ Middle School.

Federal regulations, at 34 C.F.R. 300.530, allow for students with disabilities to be removed from their current educational placement for up to 10 days in a school year, without educational services, and before specific procedures and timelines must be followed to ensure the behavior resulting in the disciplinary action is not a manifestation of the child's disability.

The findings of Issue One are incorporated herein by reference.

Interviews and documentation found the student displayed frequent inappropriate behaviors at _____ Middle School including eloping from the classroom, noncompliance, defiance of authority, and aggression. The student's behaviors were addressed in the IEP through goals and a BIP. These behaviors also resulted in disciplinary actions including in-school suspension (ISS), parent conferences, Do Not Admit Slips, and OSS.

There is disagreement between the parent and school staff's recollection of events and the documentation. The parent believes that when she was called by school staff she was being asked to pick the student up from school and would then arrange for the student to leave with PACES staff. She notes this happened on three occasions on October 10, October 14, and December 6, 2017. School staff acknowledged phone conferences with the mother were made on these dates but the student was not required to go home. The school staff believes the mother chose to remove the student following these phone calls to allow the student to work with PACES staff.

School staff acknowledged and documentation shows the student was assigned to ISS on November 29, 2017 but that special education services were provided in that setting by a special education paraprofessional with supervision of a special education teacher.

School staff acknowledged and documentation shows the student was assigned to OSS for a total of six days on October 5, October 31, December 7, December 15, December 18, and December 19, 2017.

A review of the student's Attendance Record, Student Discipline History, and the interview notes found the student was also removed from the current educational placement at _____ Middle School on the following dates:

September 1– Do not admit slip and sent home 6th period

September 5 – student not allowed in school because parent had not conferenced with school staff

September 6 – student not allowed in school because parent had not conferenced with school staff

September 12 – parent called and student sent home 3rd period

October 30 – office referral, parent called, student sent home 8th period

In this case, USD #___ removed the student from the current educational placement a total of 11 days during the 2017-18 school year. Interviews and documentation show USD #___ did not follow the required procedures or timelines on December 19, 2017 which was the 11th day the student was removed from her current educational placement. Based on the foregoing, the allegation of a violation of special education laws and regulations related to discipline is substantiated.

ISSUE THREE: The USD #___ and the _____ Special Education Cooperative, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student an equal opportunity to participate in nonacademic and extracurricular services and activities during the 2017-18 school year.

Findings:

The mother believes the student was denied participation in field trips at _____ Middle School because her disability. The mother reported the student had to sit in the office rather than attend school field trips during first semester of the 2017-18 school year.

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

Interviews and documentation found _____ Middle School offered three field trips during first semester of the 2017-18 school year that the student was eligible to participate in as were her peers. The first was a Life Skills III classroom field trip to the apple orchard in September. The student participated in this field trip.

The second was a school-wide field trip to see the movie, “Wonder” on November 30, 2017. The field trip permission form provided to all students listed one of the criteria that a student needed to meet in order to go on this field trip as “no in-school suspension (ISS) or out-of-school suspension ((OSS).”

Documentation found the student served an ISS on November 29, 2017 and therefore was not eligible to participate in this field trip.

The third field trip was also a Life Skills III field trip for a holiday party in December. Ms. K and Ms. _____ did not recall the date of the field trip but reported that the student was serving an OSS so was not able to attend.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to the student being afforded an equal opportunity to participate in nonacademic and extracurricular services and activities is not substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in the following areas:

a) Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education available to all children residing within the district. 34 C.F.R. 300.17 defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

In this case, documentation and interviews found USD #___ amended the student's IEP in May 2017 to 1,160 minutes per week, which the investigator suspects was the current amount of special education services provided in the Life Skills III classroom at the middle school level at that time. However, at the beginning of the 2017-18 school year, the amount of special education services provided in the Life Skills III class changed to 1,215 minutes per week but this change was not addressed through the IEP process until November 17, 2017.

b) Federal regulations, at 34 C.F.R. 300.530 allow for students with disabilities to be removed from their current educational placement for up to 10 days in a school, without educational services; however, beginning on the 11th day of removal, specific procedures and timelines are required to be followed to ensure the behavior resulting in the disciplinary action is not a manifestation of the child's disability.

In this case, USD #___ removed the student from the current educational placement a total of 11 days during the 2017-18 school year. Interviews and documentation show USD #___ did not follow the required procedures or timelines on December 18, 2017 which was the 11th day the student was removed from her current educational placement.

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
    a) Comply with 34 C.F.R. 300.101 and 34 C.F.R. 300.17 by providing special education and related services in conformity with the IEP.
    b) Comply with 34 C.F.R. 300.530 by following the required procedures and timelines to provide protections in the area of discipline to students with disabilities.
2. Note that individual correction of noncompliance related to implementing the IEP as written is not ordered. The noncompliance related to providing special education in conformity with the IEP at the beginning of the school year resulted in the student receiving an additional 55 minutes per week of special education services which did not create a need for the IEP team to meet to consider if FAPE was provided and compensatory services were owed to the student.
3. No later than May 15, 2018, USD #___ shall review their procedures for monitoring the provision of special education services in conformity with the IEP. USD #___ shall develop a written procedure and train appropriate staff to implement this procedure prior to the beginning of the 2018-19 school year. A copy of this written procedure will be provided to Early Childhood, Special Education and Title Services. In addition, USD #___ will document who provided the training and the content of the training and send that documentation to Early Childhood, Special Education and Title Services.
4. Within 10 calendar days of accepting the findings of this report, USD #___ shall follow the legally required procedures and timelines to ensure the behavior resulting in the disciplinary action on December 19, 2017 was not a manifestation of the child's disability.
5. Further, USD #___ within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:
    a) a statement verifying acceptance of the corrective action or actions specified in this report;
    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

The KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
_____ UNIFIED SCHOOL DISTRICT #___
ON MARCH 6, 2018

DATE OF REPORT: APRIL 4, 2018

This report is in response to a complaint filed with our office by Dr. _____ on behalf of his son, ____. _____ will be referred to as "the student" in the remainder of this report. Dr. _____ will be referred to as "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with Dr. Mark Schmidt, Assistant Superintendent for the _____ School District, on March 13, 2018. On March 20, 2018, the investigator spoke in a conference call with Dr. _____, Director of Special Education for the district and with _____, Assistant Director of Special Education. The investigator spoke again by telephone with the Director on March 29, 2018.

The investigator spoke by telephone with the parent on March 20, 2018.

In completing this investigation, the complaint investigator reviewed the following material:

- IEP for this student dated December 16, 2015
- Email correspondence dated August 15, 2016 between the parents and Speech/Language Pathologist regarding services and scheduling of IEP Team meeting
- Prior Written Notice for Identification Initial Services, Placement, Changes in Services, Change of Placement, and Request for Consent dated August 18, 2016
- Notice of Meeting dated August 18, 2016
- Email to the parents from the Speech/Language Pathologist dated October 4, 2016 regarding student progress
- Email dated October 21, 2016 from the Speech/Language Pathologist to the parents explaining how to access IEP Progress Reports via ParentVue
- Student Review dated October 27, 2016
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated October 27, 2016
- IEP Progress Report – Annual Goal dated May 25, 2017

- Notice of Meeting dated August 23, 2017
- Acknowledgement of support from Reading specialist dated August 30, 2017
- IEP Progress Report – Annual Goal dated October 13, 2017
- Email dated October 17, 2017 from the Speech/Language Pathologist to the parents regarding the schedule for IEP meeting and parent/teacher conference
- Email dated October 19, 2017 from the Speech/Language Pathologist to the parents regarding speech services
- Email dated October 20, 2017 from the Speech/Language Pathologist to the parents regarding how to access progress reports through ParentVue
- Email dated January 26, 2018 from the classroom teacher to the parents
- IEP for this student dated October 25, 2017
- Student Review dated October 25, 2017
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated October 25, 2017
- Email dated January 26, 2018 from the classroom teacher to the parents
- Problem Solving Form dated January 26, 2018
- Problem Solving Intervention form
- Email dated February 8, 2018 from the parent to the principal
- Email dated February 12, 2018 from the principal to the parent
- Email dated February 13, 2018 from the student's mother to the principal
- Email dated February 13, 2018 from the principal to the student's mother
- Email correspondence dated February 13, 2018 between the parent and the Director and the parent and the School Psychologist
- Notice of Meeting dated February 14, 2018
- Notes from February 27, 2018 meeting
- Email from the Speech/Language Pathologist to the parents dated March 1, 2018
- IEP Progress Report – Annual Goal form dated March 9, 2018
- Guide to Speech Sound Development
- Report Cards for the 2015-16, 2016-17 and 2017-18 school year
- Reading Intervention Program notification
- Reading Specialist introductory letter

Background Information

This investigation involves a 7-year-old boy who is enrolled in the 1st grade. The student's parents are divorced and share joint custody of the student. The student is not a resident of the district where he is currently enrolled but is able to attend school in the district because his mother is employed there.

The student was first determined to be eligible for and in need of special education services in the area of speech in December of 2015. USD # ___ in [previous district] provided the student with 60 minutes per week of service from a Speech/Language

Pathologist through the end of the 2015-16 school year.

The student enrolled in Kindergarten in the current district at the beginning of the 2016-17 school year.

The student has been identified with an exceptionality under the category of Speech/Language Impaired. The student's sister also receives special education services.

Issues

In his complaint, the parent identifies seven issues:

Issue One: The district accepted and implemented the student's IEP from another district without first conducting an evaluation to determine if that IEP was appropriate.

When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district in which the child was enrolled. The previous school district in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school district (K.S.A. 72-987(g); 34 C.F.R. 300.323(e)(f)(g)). Parent consent is not required to transfer education records to a school where a student intends to enroll, or is already enrolled, if the sending school's annual FERPA notice states that the school forwards education records to schools that have requested the records and in which the student seeks, or intends, to enroll, or is already enrolled (see 34 C.F.R. 99.31 (a)(2)).

When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous school district. Once the new district receives the current IEP the new school district may adopt the child's IEP from the previous school district or develop and implement a new IEP. If the new district develops a new IEP, parent consent is required for any substantial change in placement or any material change in services proposed in the new IEP (see K.S.A. 72-988(b)(6)). When a student moves within the State, eligibility has already been established and a reevaluation is not required.

Parent's Position

The parent contends that the district acted inappropriately when it failed to reevaluate the student prior to initiating speech services at the start of the 2016-17 school year.

District's Position

It is the assertion of the district that there was no requirement to reevaluate the student before adopting the then current IEP written by the student's previous district. The district contends that it acted appropriately when it accepted the IEP and developed an interim IEP with the same services and goals as had been established by the sending district and when it subsequently wrote a new IEP for the student in October 2016 with new goals addressing the student's present level of performance.

Investigative Findings

The student first enrolled in the district in August of 2016, entering with an active IEP for Speech/Language services from another Kansas school district. On August 18, 2016, within 7 days of the start of the 2016-17 school year on August 11th, the parent was given written notice of the district's intent to accept the IEP developed for the student in his previous district. Per the prior written notice form, the district proposed that the student's IEP "written by the [previous] School District be accepted by the _____ School District."

The district provided 30 minutes of support from a Speech/Language Pathologist twice weekly as specified in the [previous] IEP until a new IEP was written on October 27, 2016.

Conclusions

Special education laws and regulations do not require a receiving school district to reevaluate a student who transfers into the district with a current IEP from another Kansas district. The district acted within a reasonable time to obtain the student's IEP from the previous district and implemented services as outlined in that document, providing the parent with prior written notice of the district's proposed action. A violation of special education laws and regulations is not substantiated on this issue.

Issue Two: The district has failed to provide any reports of progress toward attainment of goals established in the student's IEPs.

The IEP for every student must include a description of when parents will be provided periodic reports about their child's progress toward meeting the annual goals. An example might be through the use of quarterly or other periodic reports concurrent with the issuance of district report cards (K.S.A. 72-987(c)(3); 34 C.F.R. 300.320(a)(3)). The reporting may be carried out in writing, electronically or in paper format, or through a meeting with the parents (including documentation of information shared at the meeting), whichever would be a more effective means of communication. Whatever the method chosen, child progress toward the goals must be monitored in the method indicated on the IEP and progress reports should include a description of the child's progress toward his/her measurable annual goals.

Parent's Position

The parent contends that he has not been provided with reports of the student's progress toward attainment of his IEP goals.

District's Position

It is the position of the district that all progress reports were provided to the parent through the district's student information system, Synergy. The Speech/Language Pathologist sent emails to both parents regarding how to access progress reports. Emails were sent to the parent using both his work and personal email addresses. The district further asserts that every progress report contained data regarding the student's progress.

Investigative Findings

The student's December 2015 IEP (developed by another Kansas school district and adopted by the current district in August of 2016) noted that "progress toward achievement of goals & objectives is monitored on a quarterly basis in accordance with the districts established grade reporting schedule." In the current district, parents are provided with grade reports regarding their children in October, January, March and May of each school year.

The district utilizes a student information system called "Synergy" to provide grade reports to parents of all students and to provide progress reports to parents of all special education students. If parents request paper copies of grade cards or progress reports, the district is willing to print those forms from the Synergy system. There is no indication this parent has made such a request.

On October 4, 2016, the Speech/Language Pathologist sent an email to both parents stating, "Today we worked on s- blends in words and (the student) received 51/52 = 98%...I have noticed that he is not using third-person singular morphological structures accurately, so…I'll see how he progresses and determine if we will need that added to his IEP when we meet."

A form entitled "IEP Progress Report – Annual Goal" dated October 14, 2016 reflects the monitoring of the student's progress on the speech goal which read as follows:

> "Given pictures or objects and prompts as needed (verbal, visual, tactile), (the student) will imitate 8 out of 8 target sounds (K, F, V, Z, J marking both consonants in S-blends, R-blends, L-blends) in phrases or sentences with 80% accuracy by 12-16-2016."

The report noted that the student was making progress toward attainment of the goal. Under "Note," the form states:

> "(The student) is currently able to produce s-blend words in the initial position of words (ie. Spider, skate, slipper, student, snake, and swimsuit) with 98%

accuracy and is able to use them in short phrases/sentences with 70% accuracy during therapy sessions."

On October 21, 2016, the Speech/Language Pathologist sent an email to both parents with instructions on how to access IEP progress reports via "ParentVue" – a component of the district's Synergy software system.

A "Student Review" form signed and dated by the parent on October 27, 2016 contains the following statement:

"Progress reports were shared with grade cards."

The Student Review form also noted that the student was developing age appropriate speech sounds but struggling with sounds that were not expected to be mastered by the student's age level at that time.

A new IEP was developed for the student on October 27, 2016. With the written consent of the parent, two new goals were developed for the student:

- "By October 2017, after being taught developmentally appropriate speech sounds productions, (the student) will converse during therapy sessions utilizing accurate sounds to communicate with at least 80% accuracy."
- "By October 2017, after being taught developmentally appropriate grammatical structures, (the student) will use prepositions, auxiliary verbs (helping verbs), personal pronouns and possessive pronouns accurately during therapy sessions, with at least 80% accuracy."

Four progress monitoring dates were specified in the October 2016 IEP:

- December 20, 2016
- March 10, 2017
- May 25, 2017
- October 26, 2017

An "IEP Progress Report – Annual Goal" form dated May 25, 2017 shows that the student's progress on both goals was monitored on December 19, 2016 and on March 10 and May 25, 2017. The student was reported to be making progress at every monitoring period toward mastery of both goals. Comments regarding the student's progress were present for each monitoring period. According to the progress report, the student had mastered his language (grammar) goal by the May reporting period, but maintenance of the skills was to be checked in the Fall of 2017.

An "IEP Progress Report – Annual Goal" form dated October 13, 2017 shows that the student's goals were again monitored and progress was reported on October 13, 2017. According to comments written by the Speech/Language Pathologist, the student was "able to produce s-blends in sentences during therapy sessions with 89% accuracy.

The most difficult s- blend for him (continued) to be “st”…(services would) continue to address conversational speech accuracy with s-blends. The next sound (targeted would be) the voiced “th” (ie. then, brother, and breathe).”

The form also shows that the student “continues to show mastery of his language skills: using personal and possessive pronouns, using ‘is’ and ‘to’ in his sentences.”

On October 20, 2017, the Speech/Language Pathologist sent an email to both parents regarding how to access IEP progress reports through ParentVue – a part of the district’s Synergy student information system.

On October 25, 2017, the team conducted an annual review of the student’s IEP. According to a statement included under the section entitled “Summary of Present Levels of Academic Achievement and Functional Performance,” the student had

> “mastered his language goal and currently demonstrates developmentally appropriate skills. (He) has made gains in his speech productions also. (He) is currently able to produce s-blend words in phrases and sentences with 89% accuracy (ie. Spider, skate, slipper, student, snake, and swimsuit). He is currently working on correct placement for the voiced ‘th’ sound (ie. then, brother, and breathe). (He) inconsistently produces a t/ch in the medial or final position of words, s/sh (tras/trash), w/l and blends, w/r and f or s/unvoiced ‘th’ (maf/math and sumb/thumb) and an interdental lisp for ‘s’ and ‘z’ (forward tongue). These sounds will be modeled accurately during therapy sessions, however, not addressed in goals at this time due to them not being developmentally delayed…”

Only one goal was included in the student’s October 2017 IEP. As stated in the document, “progress on goals will be reported with the same frequency as general education report cards.” Four progress monitoring dates were specified in the October 2017 IEP:

- December 20, 2017
- March 9, 2018
- May 30, 2018
- October 24, 2018

A “Student Review” form signed by the father and dated October 25, 2017, states, “The team reviewed the progress reports from the first quarter. (The student) is able to do s blends with 89% accuracy, st sounds are the most difficult. The voiced th is the next sound to focus on. Developmentally it is an end of the year for first grade. He has mastered his language goal in May and maintained it this quarter with pronouns, using helping verbs, and using the word to before verbs.”

An “IEP Progress Report – Annual Goal” form dated March 9, 2018 shows that progress toward attainment of the October 2017 speech goal was monitored and reported on December 20, 2017 and March 9, 2018.

Conclusions

Progress was reported to this parent via the district’s student information system in the same manner that progress is reported to all parents of students receiving special education services. Documents provided by the district show that it has monitored and reported student progress toward attainment of all goals on the schedule established in the student’s 2015, 2016, and 2017 IEPs. A violation of special education laws and regulations is not substantiated on this issue.

Issue Three: The district reduced Speech/Language services to the student without first conducting a reevaluation or obtaining parent consent.

Federal regulations, at 34 C.F.R. 300.101 require public schools to make a free appropriate public education (FAPE) available to children with disabilities. At 34 C.F.R. 300.17, the regulations define FAPE, in part, as special education and related services provided in conformity with an IEP.

A district is required to obtain written parental consent prior to making a substantial change in placement (more than 25% of the child’s school day). Parental consent also must be obtained before a district makes a material change in services (25% or more of any one service).

A reevaluation must be conducted if the school determines that the education or related service needs, including improved academic achievement and functional performance of the child, warrant a reevaluation, or, if the child’s parent or teacher requests a reevaluation. A reevaluation must be conducted before a school determines a child is no longer a child with an exceptionality (see K.S.A. 72-986 (h)-(l)).

Parent’s Position

The parent contends that a recommendation for a reduction in Speech/Language services for the student was brought up during a parent teacher conference but not included in the student’s IEP. It is the parent’s position that the reduction in services was recommended without a reevaluation and in the absence of any supportive testing data. The parent further contends that the Speech/Language Pathologist has failed to provide any evidence through monitoring reports that the student had mastered his language goal.

District’s Position

The district asserts that it was not required to conduct a reevaluation in order to increase or decrease services but acknowledges that parent consent is required if a

change of more than 25% in services is proposed. The district states that the change in speech services was discussed at an annual IEP meeting on October 25, 2017 which both parents attended, and both parents gave written consent for the change.

Investigative Findings

The student's October 2016 IEP stated that the student was to receive speech and language services twice a week for 30 minutes. The IEP contained two goals – one speech goal and one language goal.

As discussed previously under Issue Two, the district monitored and reported student progress on these goals as required.

On October 25, 2017, the IEP Team – which included both parents – conducted an annual review of the student's IEP. The "Summary of Present Levels of Academic Achievement and Functional Performance" section of the October 2017 IEP contains the following statement:

> "(The student) has mastered his language goal and currently demonstrates developmentally appropriate skills. (The student) has made gains in his speech productions also. (The student) is currently able to produce s-blend words in phrases and sentences with 89% accuracy…He is currently working on correct placement for the voiced 'th' sound…(The student) inconsistently produces a t/ch in the medial or final position of words, s/sh, w/l and blends, w/r and for s/unvoiced 'th'..and an interdental lisp for 's' and 'z'…These sounds will be modeled accurately during therapy sessions, however, not addressed in goals at this time due to them not being developmentally delayed and in the future they may not be negatively impacting his educational school day."

The October 2017 IEP contains one Speech goal related to the production of s-blend sounds, unvoiced "th" sounds, "L" sounds, and "R" sounds. Services from a Speech/Language Pathologist were reduced to 30 minutes one time per week. No language goal was included in the October 2017 IEP.

On October 25, 2017, both parents were given prior written notice of a proposed material change in services for the student and for a substantial change in placement. According to the prior notice form, "due to progress made and mastery of his language goal, it is proposed that (the student's) speech/language services be reduced from 2x30 minutes weekly to 1x30 minutes weekly." Both parents gave signed written consent for the changes in services and placement outlined in the student's IEP.

Conclusions

The district held an IEP Team meeting on October 25, 2017. No evidence was provided to show that the parents requested that the student be reevaluated prior to a change in services. Documents provided by the district show that both parents were present at

the IEP Team meeting, and both parents gave written consent for a reduction in speech/language services for the student. Speech/ language services, while reduced, continued to be provided. Under these circumstances, a violation of special education laws and regulations is not substantiated on this issue.

Issue Four: The Annual Goal contained in the student's October 2017 IEP did not contain all required elements.

The IDEA includes numerous IEP requirements. Federal regulations, at 34 C.F.R. 300.320, provide a definition of an IEP (Individualized Educational Program). At 34 C.F.R. 300.320 (a)(2)(i), the regulations state that a student's IEP must include a statement of measurable annual goals and – ***for children with disabilities who take alternate assessments aligned to alternate achievement standards*** – a description of benchmarks or short-term objectives. These same regulations, at 34 C.F.R. 300.320(a)(3)(i), require the IEP to include a description of how the child's progress toward meeting the annual goals will be measured.

Measurable annual goals are descriptions of what a child can reasonably be expected to accomplish within a 12-month period with the provision of special education (specially designed instruction) and related services. The annual goals included in each child's IEP should be individually selected to meet the unique needs of the individual child.

Well written annual goals which meet the requirements in 34 C.F.R. 300.320(a)(2) and (a)(3), contain four key components:

- Timeframe: the point by which the student is expected to attain the goal
- Conditions: the manner in which progress toward the goal is measured
- Behavior: the performance that is being monitored
- Criterion: how much, how often, or to what standards the behavior must occur in order to demonstrate that the goal has been reached

A well written annual goal will pass the "Stranger Test" – an evaluation of a goal to determine if it is written in such a manner that an implementer who does not know the student could use it to develop appropriate instructional plans and assess the child's progress.

The law does not require an IEP team to address every area of need a student may demonstrate nor does it require that every condition under which a behavior might be measured be specified.

The law requires that benchmarks or short term objectives be developed only on the IEP of a child with a disability who takes an alternate assessment aligned to alternate achievement standards (34 C.F.R. 320(a)(2)(ii)). However, this requirement does not prohibit the development and use of benchmarks or short term objectives to measure progress toward meeting the measureable annual goal for any child with an exceptionality (Federal Register, August 14, 2006, p. 46663).

Benchmarks are major milestones that describe content to be learned or skills to be performed in sequential order. They establish expected performance levels that coincide with progress reporting periods for the purpose of gauging whether a child's progress is sufficient to achieve the annual goal. Benchmarks measure intermediate progress toward the measurable annual goal.

Short-term objectives are measurable, intermediate steps between a child's baseline data in the present level and the annual goal, with the conditions under which the skill is to be performed, the behavior to be observed, and the criteria for success. A short-term objective follows the same pattern of the goal, with a shorter timeframe and intermediate criteria to be attained. The goal and short-term objectives establish how child outcomes will be measured. Diagnostic assessment will provide the information needed to develop an instructional plan for achieving the goals and objectives.

Parent's Position

The parent contends that the annual goal contained in the student's October 2017 IEP was inadequate because it did not meet the "rubric" required by the state.

District's Position

It is the district's position that short-term objectives/benchmarks for the student's speech goal are not required since the student does not take the alternate assessment. However, the district has added objectives to the goal for clarity.

Investigative Findings

The speech goal in the student's October 2017 IEP reads as follows:

> "By October 2018, after being taught developmentally appropriate speech sound productions, (the student) will converse during therapy sessions utilizing accurate sounds to communicate with at least 80% accuracy."

According to the "Baseline" portion of the student's IEP, focus was placed on s-blend words in phrases and sentences and on placement for the voiced "th" sound.

On March 1, 2018, the Speech/Language Pathologist sent both parents an email which included benchmarks for the student's goal and the additional information the parents wanted to have included in the student's IEP.

Those benchmarks are as follows:

- "By December, (the student) will converse during therapy sessions utilizing accurate S-blend sounds (ie. skate, step, slip, swim, smile) to communicate with at least 80% accuracy.

- By March, (the student) will converse during therapy sessions utilizing accurate unvoiced 'Th' sounds (ie. thanks, laughing, math) to communicate with at least 80% accuracy.
- By October, (the student) will say words with the 'R' sound in the initial, medial, and final position of words, during therapy sessions with at least 80% accuracy."

Conclusions

The annual goal for speech included in the student's October 2017 IEP contains the four required key components, and the district was not required by law to develop benchmarks or short-term objectives for that goal since the student does not take an alternate assessment. After discussion with the parent at a February 27, 2018 team meeting, the district opted to develop benchmarks for the goal for the sake of clarity and provided those benchmarks to the parent. A violation of special education laws and regulations is not substantiated on this issue.

Issue Five: The district conducted an evaluation of the student without first obtaining parental permission.

As stated above under Issue One, federal and State laws and regulations have specific requirements for requesting parent consent. Parents must be provided with prior written notice and parental consent must be obtained before a district conducts an initial special education evaluation of a student and before conducting a special education reevaluation (see K.A.R. 91-40-27). However, parental consent is not required for the administration of a test or other evaluation that is administered to all children unless consent is required of parents of all children (see 34 C.F.R. 300.300(d)).

Parent's Position

The parent asserts that the district has conducted phonological testing and administered Lexia assessments without notifying the parent and obtaining written consent for that action.

District's Position

It is the district's position that it has not conducted a special education evaluation or reevaluation without first obtaining parental consent. The district contends that the Reading Specialist administered the phonological awareness screening reported to the parents at meetings on February 8 and 27, 2018. According to the district, Lexia is an on-line reading instruction program, not a reading assessment.

Investigative Findings

The assessments referenced by the parent were not special education assessments. According to the company website, the Lexia program is used to provide differentiated

literacy instruction for students. As stated on the website, the program "provides progress-monitoring data without a test."

Conclusions

The district did not conduct a special education evaluation or reevaluation of the student. The phonological awareness screening was administered by the Reading Specialist and Lexia is an instructional tool – not an assessment measure. Under these circumstances, a violation of special education laws and regulations is not substantiated on this issue.

Issue Six: The student is being pulled from his general education classroom to receive special education services that are not included in his IEP.

As outlined in the Kansas Special Education Services Process Handbook, for children in kindergarten through age 21, Kansas screening laws require that schools utilize observations, instruments, measures, and techniques that disclose any potential exceptionality and indicate a need for evaluation, including hearing and vision screening, and age-appropriate assessments for school-aged children designed to identify possible physical, intellectual, social or emotional, language, or perceptual differences.

In Kansas, this screening is conducted, in part, through the required implementation of general education intervention (GEI). The purpose of GEI is to intervene early for any child who is presenting academic or behavioral concerns. This early intervention leads to a better understanding of the supports children need in order to be successful in the general education curriculum and school setting. Additionally, the data collected during GEI assists school personnel in determining which children may be children with potential exceptionalities who need to move into evaluation for special education. Collaboration between special education and general education staff is an important part of the general education intervention process. Both special education and general education personnel must be involved in this building-level, school-wide activity (K.A.R. 91-40-7(c)), however, some services provided by special education staff may not be fully reimbursable.

The GEI process should continue until a successful intervention is determined. However, when it is evident that the child's needs require resources beyond those available in general education, and the team suspects the child is a child with an exceptionality the child must be referred for a special education evaluation. At any time during GEI, the team responsible for planning and implementing the interventions has three decisions that may be made:

1. Continue the intervention and monitor child's progress
2. Change or modify the intervention and monitor child's progress
3. Refer the child for a special education evaluation.

It should be made clear here that the process of continually designing and re-designing supports for children is one that does not end until the child is successful. Even when the decision has been made to move from GEI into an evaluation, the intervention process should not stop. Rather, it becomes part of the evaluation process.

GEI may be carried out through a school-wide approach of providing a multi-tiered system of scientifically, research-based interventions for all children (e.g. MTSS) or through an individual child problem solving approach. Regardless of the approach used, the focus should be on designing supports for children who need additional assistance in order to be successful in the general education curriculum and environment.

Kansas encourages schools to use a school-wide, multi-tiered model of support for all children. In Kansas, this is supported through the Multi-Tier System of Supports (MTSS) which includes both academic and behavior supports. The following briefly explains the multi- tiered aspect of the school-wide approach:

> Tier 1: All children receive a core instructional program that uses a scientifically validated curriculum that is provided for all students. Schools choose curricula that have evidence of producing adequate levels of achievement (i.e., research-based) and instruction is differentiated within the core to meet a broad range of student needs. Therefore, interventions are provided via the general curriculum. Universal screening of all children to monitor progress and to identify children who may need additional support is conducted. Approximately eighty percent of children in the school will be successful in the general curriculum.
>
> Tier 2: Those children who do not respond to the core instructional procedures will receive targeted group interventions in addition to core instruction. More frequent measures of progress monitoring are used to collect child progress data. Approximately fifteen percent of children in the school will need targeted (supplemental) support.
>
> Tier 3: A few children receive intensive, individualized interventions. These may be in addition to, or instead of, the supports provided in Tier 1 and Tier 2 depending on the needs of the child. Interventions will be more intensive and delivered in more substantial blocks of time. Approximately five percent of children in the school will need this kind of intensive support.

Within a MTSS depicted above, children will receive GEI as a part of the system in place for all students. Data collected at each tier should guide school personnel as to the next steps to take based on the child's response to interventions tried. At least by the time a child is ready to access the more intensive supports of Tier 3, the school should employ the use of individualized problem solving to design the intensive individualized support the child will receive as well as a plan to monitor the child's progress and document the child's response to the scientifically research-based interventions. The approach of individual child problem-solving is therefore a component

of the larger school-wide system, or it may stand alone as a method to conduct GEI as outlined below.

The problem-solving process is typically carried out through building level teams. These teams function with the intent to provide support to any child who may be experiencing difficulty (academic or behavior) and to work to improve the overall achievement of all children in the school. Typically, these teams facilitate the problem-solving process which results in the development of an intervention plan which documents the child's area of concern, the interventions implemented, the data reflecting the child's response to the intervention, and the recommendations as a result of the child's response to the intervention.

All steps should include parent involvement – not just informing parents, but including them in decision-making whenever possible. Additionally, parents are to be provided with copies of the child data collected as interventions are tried and monitored for children.

The four basic steps of the problem solving process are:

STEP 1. Problem Identification

STEP 2. Problem Analysis

STEP 3. Develop and Implement an Intervention Plan

STEP 4. Evaluate and Revise Plan

Before a child may be referred for a special education evaluation, school personnel are now required to have data-based documentation that:

(1) general education interventions and strategies would be inadequate to address the areas of concern for the child, or

(2) the child was provided appropriate instruction in regular education settings that was delivered by qualified personnel; and

(3) the child's academic achievement was repeatedly assessed at reasonable intervals which reflected formal assessment of the child's progress during instruction (K.A.R. 91-40-7(c)).

In either case, there must be data-based documentation that provides a basis for determining that a special education evaluation is warranted.

In most cases, school personnel will be documenting data from the GEI and strategies that have been tried. Schools must have data-based documentation that: (1) appropriate instruction was provided to the child, (2) the child was provided appropriate

instruction delivered by qualified personnel in regular education settings; (3) the child's academic achievement was repeatedly assessed at reasonable intervals which reflected formal assessment of the child's progress during instruction; and (4) the instructional strategies were used and student- centered data was collected. The data to document that appropriate instruction was provided to the child may include evidence that the school's curriculum has a solid research base and that it contains, for example in reading, the essential components of reading instruction.

Additionally, data could include the extent to which instruction has been delivered by qualified teachers. Other data may include evidence that the child has regularly attended school in order to access instruction. The data to document the educational interventions and strategies that have been implemented may include records such as intervention plans that indicate the interventions and strategies selected and implemented for a given child. The requirement to provide data-based documentation of the repeated assessments of child progress during instruction (i.e. progress monitoring) is perhaps the most important of all. Progress monitoring data is used to evaluate the effectiveness of the intervention; to determine the intensity of interventions and resources needed to support child learning; and, to provide a basis for school personnel to make decisions during intervention. Documentation of progress monitoring may include charts/graphs or records of other systematic data collection. This documentation must also include evidence parents were provided with the results of the assessment of child progress and that those results indicate that an evaluation is appropriate.

Additional documentation is required for schools that utilize a school-wide multi-tiered system of support approach to providing GEI. In addition to the data described above, the school must document that the child's parents were notified about:

- The State's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided;
- Strategies for increasing the child's rate of learning; and
- The parents' right to request an evaluation (K.A.R. 91-40-10(f)(2); 34 CFR 300.311(a)(7)(ii)).

Although this documentation is required only if the child goes on for an evaluation and the child is subsequently placed as having a learning disability, schools should be aware of this so that it may be attended to.

A district is not prohibited by law from implementing the problem-solving process for a student who has already been determined to be a child with an exceptionality. Rather, the problem-solving process can provide additional, critical information to the team in determining whether some of an exceptional student's needs can be adequately addressed through general education intervention or whether additional special education services are warranted.

Further, the standard for the determination of whether or not a student meets eligibility guidelines as a student with a learning disability is different from requirements for eligibility determination for another categorical area (such as speech/language) and requires the district to provide clear evidence that specific criteria have been met.

Questions often arise about who can work with a student to provide what type of support at what point in the GEI process and how that fits with funding restrictions. It is the responsibility of both general and special educators to carry out GEI. Further, because child find is required by special education law and GEI is Kansas' method of conducting child find for school age children, it is expected that special educators will, in part, support carrying out GEI. This may include special educators providing such things as assisting in collecting student data, participating in the analyses of data to determine next steps, and the provision of interventions, however, there are parameters with regard to funding to be attended to. Those parameters are outlined in the Special Education Reimbursement Guide for State Categorical Aid.

According to State guidelines, special education and related services personnel may participate in the general education interventions process in a variety of ways including providing intensive, direct instruction to students and collecting and analyzing student data. If special education and related service personnel provide direct services for the purpose of Child Find, there must be documentation on an individual student intervention plan for auditing purposes. A record or log listing the name of the special education provider, along with the actual minutes and dates services are provided must be available to the auditors upon request. In this situation, special education or other related service personnel may be reimbursed for providing intensive direct instruction for up to but not more than 180 cumulative hours, per school year, **per position**. A referral for evaluation must occur once data-based documentation indicates a special education evaluation is warranted.

The difference between screening and evaluation is the intent of the activities. If the intent of the activities is to determine instructional strategies, that constitutes screening. It is clear in the regulation and subsequent comments that the ONLY activities that may be considered screening are those activities which result directly in information to be used solely for the purpose of designing instructional strategies. At any point that the intent changes to seek to determine if the student is a child with an exceptionality or if the student is in need of special education, that is evaluation and all due process protections come into play. At that point, parents must be contacted to seek consent for evaluation.

Federal and State laws and regulations have specific requirements for requesting parent consent. Parents must be provided with prior written notice and parental consent must be obtained before a district adds a new special education service to a student's IEP (see K.A.R. 91-40-27).

With regard to parent participation in meetings regarding their child, legal requirements do not apply to informal or unscheduled conversations of school personnel on issues

such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting (K.A.R. 91-40-25(e); 34 C.F.R. 300.501(b)(3)).

Parent's Position

The parent asserts that the district did not obtain parental consent before pulling the student from the general education setting to receive 45 minutes of special education services 4 times per week. According to the parent, he has not been informed by the district of any concerns regarding the student's progress in reading. It is the parent's position that the district made the decision to provide reading instruction to the student outside the general education setting without conducting any testing to determine the need for these services. The parent further asserts that the Speech/Language Pathologist has not provided the student with any accommodations or modifications which could positively impact his reading performance or inform decisions regarding the student's reading performance.

It is the parent's position that the district acted inappropriately by conducting a team meeting to discuss the student without the parent being present. He further asserts that the student's IEP should be amended to include a reading goal and additional accommodations and modifications for the classroom should be added to the student's IEP.

District's Position

The district confirms that the student is currently working with the special education teacher but asserts that the decision to provide time-limited (6 week) support to the student from that teacher is a Tier 3 intervention provided as a part of the building level problem solving process.

It is the district's position that the parent has been informed about concerns regarding the student's reading performance since Kindergarten, knew that the student was being seen by the Reading Specialist, and was informed that the student was going to be discussed by the building level Problem Solving Team.

The district contends that the law does not require that parents be included in every meeting regarding a special education student and further asserts that a plan to involve the special education teacher in a Tier 3 level intervention was discussed with both parents on February 8 and again on February 27, 2018.

The district maintains that the Problem Solving Team proposed a short-term intervention utilizing support from the special education teacher in addition to continued classroom support (Tier 1) and continued services from the Reading Specialist (Tier 2) in order to try to close the gap in the student's missing reading skills. According to the district, a time has already been set for the Problem Solving Team to reconvene – with

parents in attendance – on April 13, 2018. If at that time the team believes that the student should be evaluated to determine special education needs in the area of reading, then the consent of the parents for evaluation/reevaluation will be requested.

The district notes that the parents left the meetings voicing approval of the proposed intervention plan.

The district also notes that at the time of the first Problem Solving team meeting with the parents on February 8, 2018, the team discussed the idea of evaluating/ reevaluating the student during the 6-week intervention period. The parents indicated that they preferred to wait until the intervention period was over to determine whether evaluation/reevaluation was warranted. Subsequently, the parent sent an email to the district requesting evaluation/reevaluation but at the second team meeting on February 27, 2018 he again indicated he preferred to wait until the 6-week intervention was completed.

Finally, the district states that because the student has not been identified as exceptional because of reading deficits, it is not yet appropriate to amend the student's IEP to include reading-related goals.

Investigative Findings

Currently the student is being pulled from the general education classroom for 25 minutes, 4 days per week to work with a Reading Specialist. He is also being seen for a "Child find Intervention" by the special education teacher 4 times per week for 40 minutes per session. Speech/Language services are provided once per week for 30 minutes as specified in the student's October 2017 IEP.

Communication by the District Regarding the Student's Reading Skills:

The student began receiving support from a building level Reading Specialist at the Kindergarten level. A summary of an October 27, 2016 IEP Team meeting for the student notes that the parent had given signed permission for the student to receive support in a small group setting from a district reading specialist.

The district sends parents a form notifying them that their child has been determined eligible for a "Reading Intervention Program" – "a general education service…not considered special education" – that will be using the "Leveled Literacy Learning" program. The Reading Specialist also sends a form to parents explaining her services as a "general education classroom support." On August 30, 2017, both parents signed forms acknowledging that Reading Specialist support (a Tier 2 Intervention) would be provided.

The student's Kindergarten grade report card showed the student to be at levels 1 or 2 ("Requires Support" or "Developing") in all areas of reading skills assessed during

quarters 1 though 3. By the fourth quarter, he was showing proficiency in 4/11 assessed skills, was developing in 3/11, and required support in 4/11 skills.

The student's first grade report card showed him to require support in 3/6 reading skills assessed during the first quarter and developing in 2/6. By second quarter, the report card shows that he required support in only 1/6 assessed areas and was developing in 4/6.

On January 26, 2018, the student's classroom teacher sent an email to the parents detailing her concerns regarding the student's progress in the areas of reading and writing. The email read in part as follows:

> "I have seen him make progress, but it is very slow. I know that all kids develop at different rates, but I want to be sure that he doesn't fall behind. He is still struggling with learning the First-Grade Sight words. He is reading independently at a level D. The benchmark for 1st grade right now is a level G. Writing on his own is also hard for him. He struggles to know the sounds to write for the words he wants to say…I am recommending him for the Step Up to Summer program that the district provides…It is focused on reading and literacy…"

The student was referred to the building level Problem Solving team – a general education action. According to a form entitled "Level 1 & 2 Problem Solving," both parents were contacted on January 26, 2018 by his first grade teacher regarding the concerns that were discussed at the Problem Solving Team meeting, both understood the issues, and both were interested in getting help for the student.

The form contained the following information:

- Reading and writing were reported to be "difficult" for the student.
- The student was making "very slow progress" in both areas.
- While he was making good progress with phonics and sight words, he was having trouble applying those skills to the reading of text.
- The student was developing appropriate skills in all areas except reading, writing, and speech/language.

The following General Education Interventions had been implemented:

- Reading Specialist support 4 days per week
- Sight word practice
- Small reading group with first grade classroom teacher
- Level books sent home weekly
- Blending and segmenting help provided when writing
- Foundations take home program

On January 29, 2018, the classroom teacher sent an email to the parents in response to an earlier email from the parent asking "what strategies are being implemented to help

address the issues you are concerned about in regards to reading, literacy, sight words, and writing problems. Nothing has been addressed by you or (the Reading Specialist) in regards to this matter." In part, the classroom teacher replied with the following:

> "(The Reading Specialist) and I have been working with (the student) each day using many different strategies to help him with his reading, some of which include: daily phonics instruction, sight word reading and writing, reading in a small group and alone, blending and segmenting help…We would like to propose a possible reevaluation to further determine (the student's) strengths and weaknesses."

The Problem Solving Form and a Problem Solving Intervention form were shared with the parents in a parent/teacher conference on February 8, 2018 and at a second meeting on February 27, 2018. The Problem Solving form documented general education interventions provided to the student during the 2017-18 school year including those interventions provided in the classroom (Level 1) and through the Reading Specialist (Level 2) – which had been in place since Kindergarten.

The Problem Solving Intervention form specified the team's concerns with the student's progress in reading and writing and detailed results of skills testing. The form outlined "Possible Interventions" as follows:

- "Reading General Ed Intervention, LLI program" (Reading Specialist) 25 minutes per day for 4 days each week
- "Daily Reading in small group" (classroom teacher) 15-20 minutes per day for 4 days each week
- "Phonics Instruction" (classroom teacher) 5 times a week for 15 minutes each day
- "Segmenting and blending one on one help for writing" (classroom teacher) 10 minutes 3 times per week
- "Work with Para in Pod on sight words" once a week
- "Books sent home each week at level" once a week
- Leveled Foundation books sent home" (Reading Specialist) once a week

The intervention form also listed another "Possible Intervention" – "Intervention reading program with Learning Teacher" (special education teacher) for 45 minutes 5 days per week.

The intervention was intended to increase the student's reading from level D/E to F/G. The date of April 13, 2018 was established for the Problem Solving team review.

Extensive notes from the February 27, 2018 meeting outline topics discussed including the following:

- Implementation of accommodations included in the IEP at parent request
- Interventions and accommodations being provided by the classroom teacher

- Instructional strategies being used in the general education setting including the incorporation of phonological skill instruction across subjects
- Skills and levels of instruction in the LLI program taught by the Reading Specialist and the student's progress through those levels
- Instructional strategies used by the Reading Specialist
- Results of assessments conducted in the general education classroom by the Reading Specialist and by the special education teacher
- Sight word norms and the student's performance level for sight words
- Responses to questions posed by the parents
- Speech services and the student's performance with regard to developmentally appropriate sound production
- The addition of benchmarks to the student's speech goal

The team talked about what the special education teacher would be doing if the decision was made to proceed with that intervention. As stated in the notes, the district explained the Problem Solving process:

> "The Problem Solving Intervention is part of Child Find which is an ongoing process that school staff use to locate and identify students who may need special education services. It usually begins with general education interventions such as the classroom teacher and reading specialist. When a child is determined to need support in addition to what the classroom teacher has provided, a team meeting is held and an intervention plan is developed. The …care team prepared a draft to share with parents at conferences (on February 8, 2018)…A possible intervention with the Resource teacher was recommended for 6 weeks to see if additional reading support would help him to reach a goal of improving his reading level of D to F/G. This is a process we offer to k-2 grade students who we think would benefit from additional reading support. At the end of the 6 weeks we meet and go over data to see if the student has made progress and if we feel general education interventions will be enough to support the student or if we suspect the student may require sustained special education services then we recommend a full evaluation."

The team also talked about what the services provided by the special education teacher would look like:

> "…(The student) will work in a small group working on phonemic awareness skills...will address sentence segmenting vs segmenting words themselves…Sight word practice with using multi-sensory strategies such as memory aides like rhymes, drawing the word on side of card with word on other side, using different senses such as writing it in sand, writing with a smelly marker, word searches, etc…Lexia, which can also be worked on at home…Lexia is a computer program that works on reading skills…"

The team spelled out the intervention plan that would be implemented:

- The parents would continue to read and re-read leveled books with the student.
- The parents would work on the journal he would miss in order to receive services from the Reading Specialist.
- The Reading Specialist would provide 25 minutes of service 4 days a week during the first portion of the school day when students are journaling in the classroom.
- The Childfind services (work with the special education teacher) would be provided 4 times a week for 40 minutes per session during the time differentiated reading instruction was being provided in the classroom.
- Speech services would continue to be provided for 30 minutes once each week.
- The student will work on diagraphs, blends, and applying sight words in text.

Intervention:

The district initiated the intervention with the special education teacher. The student began working with the special education teacher in the resource room in a small group with identified special education students focusing on phonemic awareness skills, sight word practice, and instruction using the Lexia program.

Reevaluation:

According to the district, at the Problem Solving Team meeting on February 8, 2018, the topic of conducting an evaluation/reevaluation of the student was discussed. The team decided to delay any testing until after the 6-week intervention. However, at around 7:30 PM on the day of the meeting, the parent sent an email to the principal expressing concern about the amount of time the student was to be pulled from the general education setting. The parent stated that he no longer wanted to have the student pulled for services from the Reading Specialist and requested an "IEP Evaluation Meeting…to address what was discussed at PT conference and set a more clear plan to address non-compliance with (the student's) IEP." The parent also requested "a IEP Re-evaluation" for the student.

The principal responded to the parent on February 13, 2018, copying the student's mother. The principal stated that the district would need the parent's permission in order to conduct a re-evaluation of the student. According to the email, the principal had directed the School Psychologist to send consent forms to both parents. The principal stated that "a re-evaluation…will require collecting comprehensive academic data. The principal proposed that the student participate in the intervention with the special education teacher during the time the reevaluation was conducted, noting that the reevaluation would be completed by May 11, 2018. The principal stated that the student would no longer be seen by the Reading Specialist.

The student's mother sent an email to the principal on February 13, 2018 stating that she "would prefer that we try the 6 weeks of intervention and support with (the special

education teacher) before we evaluate, like we had originally planned." The student's mother stated that she would like to have the student continue to work with the Reading Specialist but would be "willing to compromise on that piece."

The principal responded to the student's mother on February 13, 2018 suggesting that the mother discuss the issue with the student's father. The principal wrote, "At the end of the conference…I believed we were all on the same page with preceding (sic) with the 6-week intervention support prior to making a decision to re-evaluate but (the parent's) follow-up email requested a re-evaluation. Since he requested it, and if/when he signs permission to re-evaluate, we will proceed with the re-evaluation."

On February 13, 2018, the School Psychologist sent an email to the parent attaching a prior written notice form regarding the reevaluation of the student noting that the district was asking permission to "collect comprehensive academic data to determine (the student's) eligibility and need for intense and sustained instruction particularly with reading."

The parent responded via email on February 13, 2018 stating that "the re-evaluation needs to address Speech and it's (sic) tie to reading fluency." Additionally, the parent stated, "I would like a more clear plan on how we plan to address issues that were brought up by the (school) Team at a CARE Team Meeting in regards to form a (sic) Intervention Plan…A set plan needs to be established before I just sign a re-evaluation plan…"

The Director of Special Education followed up with the parent on February 13, 2018 stating, "Your email last week requested a reevaluation which is why we prepared the consent form for reevaluation." The Director indicated that the topic of a reevaluation could be discussed at a meeting on February 27, 2018. (That meeting had been previously requested by the parent in a February 13, 2018 email to the Director.)

According to the Assistant Director of Special Education, both parents were asked by the building principal and by the Assistant Director at the February 27, 2018 meeting if they wanted to proceed with a reevaluation of the student. By report of the Assistant Director, both parents indicated that they did not want the student to be pulled away from the classroom for any additional time and did not want the student to undergo a full reevaluation until after the 6-week intervention period. The team then determined that they would wait until a follow-up meeting on April 13, 2018 to further discuss reevaluation.

To date, neither parent has given written consent for the district to conduct a reevaluation of the student.

Conclusions

This investigation has determined that the district provided the parent with a great deal of information regarding the student's progress in the area of reading including grade

cards, emails, parent/teacher conferences and team meetings. Numerous interventions have been instituted to address the student's needs and accommodations have been put in place. The option to reevaluate the student has been discussed in two team meetings, but the team – including the parents – has opted to delay any special education reevaluation until after a 6-week intervention has been completed in April 2018. The parent was provided with a request for permission to conduct a reevaluation, but written consent has not been given.

The team meeting held on January 26, 2018 was a general education Problem Solving Team meeting not a special education decision-making meeting. The special education laws and regulations associated with meeting notice and parent participation do not apply to this meeting. It should also be noted that this meeting was for planning purposes. No decisions regarding intervention services to the student were made until the parents were present to participate on February 8 and 27, 2018.

Special education laws and regulations allow districts to utilize special educators to carry out general education interventions such as assisting in collecting student data, participating in the analyses of data to determine next steps, and the provision of interventions as the special education teacher has done in this case. GEI actions do not require informed written consent in the same manner as would be required during the process of identifying a child as being exceptional. However, teams must take steps to ensure that actions are clearly part of a problem solving process.

In the case of this student, an Intervention Plan has been developed. The intervention is clearly time-limited to 6 weeks. The purpose of the intervention – to move the student to reading level F/G – is spelled out. Both parents have been involved in two meetings related to the proposed interventions. The district complied with the parent's request that the Reading Specialist portion of the intervention be terminated on February 13, 2018 and reinstated those services only with the agreement of the parent at a meeting on February 27, 2018.

Records show that the district intends for the intervention process to be used to determine whether general education interventions will be sufficient to support the student or if the student may require sustained special education services. If the team determines that general education interventions alone are not meeting the needs of the student, then a full evaluation will be recommended.

Under the circumstances described above, a violation of special education laws and regulations is not substantiated on this issue.

Additional Comments

Under Section 504 of the Rehabilitation Act, children with disabilities may not be excluded from participation in any aid, benefit, or service provided to children who do not have a disability (34 C.F.R. 104.4). That would include GEI or MTSS services provided by a public school district. Accordingly, school districts which provide GEI or

MTSS services to general education students must also make these kinds of supports available to children with disabilities. Certainly, however, districts must exercise extreme caution when utilizing a special education teacher to deliver a Tier 3 general education intervention. This is particularly true in instances where the intervention is direct service from a special educator in a special education setting, as is the case of this student, because, as is the case of this student, there is at least an appearance of an increase in special education services in a more restrictive environment without the involvement of the IEP team and without the use of procedural safeguards, such as providing a Prior Written Notice or obtaining parent consent. It is because this investigation has shown that the district has set clear limits on the duration of this intervention, has specified the general education purpose of the intervention, and has fully involved both parents in the decision-making process that the conclusion was reached that no violation has occurred. This investigation may well have had a different outcome had the district not acted as it did.

Issue Seven: The district has failed in its obligation to properly include both parents in the IEP process.

To address the requirement to strengthen the role of parents in the special education process, Congress mandated that schools afford parents the opportunity to be members of any decision-making team for their child, including eligibility, initial evaluation and reevaluation, and development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE). Schools are to ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child.

Schools must make ***reasonable efforts*** to ensure that parents have the opportunity to participate in decision-making meetings regarding their child. K.A.R. 91-40-17 provides direction in regard to IEP team meetings. Meetings are to be scheduled "…at a ***mutually agreed upon*** (emphasis added) time and place," and districts are required to provide notice to the parents "…at least 10 days in advance of the meeting," although parents can waive that required notice and allow a meeting to be held more quickly. Federal Regulations, under 34 CFR 300.344, list the required members of an IEP team and state that "…(a)t least one special education teacher of the child, or…one special education provider of the child…" must be present if an IEP team meeting is to be held.

The district is not required to schedule an IEP meeting at a time and place specified by a parent. While districts must be willing to ***try*** to accommodate the scheduling request of the parent, staff cannot be forced to work beyond their contract days. In Letter to Thomas, 51 IDELR 224 (OSEP 2008), the Office of Special Education Programs (OSEP), at the United States Department of Education, provided guidance on the requirement for scheduling IEP meetings at a mutually agreed upon time. In that guidance letter, OSEP said it is not unreasonable for schools to schedule IEP meetings ***only*** during regular school hours, regardless of the reason IEP team members cannot participate in meetings after school, including when team members cannot attend because of administrative or contractual reasons. If all of the required IEP team

members are not available at the meeting time requested by a parent, a properly constituted IEP Team cannot be assembled. Under these circumstances, the only option available to a district is to attempt to arrive at another mutually agreed upon time and place for the meeting.

The parent and the school may agree to use alternative means of meeting participation, such as video conferences or conference calls (K.A.R. 91-40-17(c); K.A.R. 91-40-25(d); 34 C.F.R. 300.322(e)).

If parents are divorced, regardless of whether either parent has primary custody, the school must provide Prior Written Notice of any special education action to ***both*** parents, even if only one parent has the right to consent, unless a court order precludes this from happening. This applies to all special education notice requirements including notice of an IEP meeting**.** However, consent from one parent is sufficient even if the other parent refuses to consent. In the event that the school receives consent forms from both parents, with one parent providing consent for the action and the other denying consent, the school is deemed to have received consent and must fulfill its obligation to provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

Parent's Position

It is the position of the parent that the district has not followed the direction of the parents' joint custody agreement and has shown a preference for the student's mother when scheduling meetings. The parent asserts that the district's actions have limited his participation in the educational decision-making process because meetings have been held at times that have not been mutually convenient. The parent states that as a result of the district's inflexibility he has had to miss work in order to attend meetings regarding the student.

District's Position

It is the district's position that efforts have been made to include both parents in all decision-making meetings regarding the student and to accommodate this parent's request that meetings be scheduled after his work day. The district states that both parents are copied on all communication regarding the scheduling of meetings.

Investigative Findings

According to the parent, his workday is 7:30 AM to 3:30 PM although he is generally at work by 7:15 AM and he often has activities that extend his day beyond 3:45 PM. The contract day for staff at the student's school is 8:15 AM to 4:00 PM.

Email records provided by the district show that the parent has since the first IEP Team meeting for the student stated his preference for having meetings scheduled outside his work hours. For that initial meeting, the district proposed meeting at 8:15 AM on August

15, 2016. The parent stated that he would be unable to meet at the time offered and indicated he would not miss work “for a meeting that can be scheduled before or after school.” The parent indicated that he could meet from 7:00 – 8:15 AM or 3:30- 4:15 PM and preferred to meet after 3:30. The district indicated that the Kindergarten teacher was a part-time employee and did not work in the afternoons. The parent was offered the option of participating via conference call. According to an email provided by the district, the parent did agree to meet at 8:15 AM.

Some meetings for this student have been scheduled at times that allowed the parent to attend meetings for the student’s sister.

Meetings for this student have been held as follows:

- October 27, 2016 IEP Team meeting and parent/teacher conference held at 5:30 PM (with a meeting for the student’s sister following at 6:30 PM)
- October 25, 2017 IEP Team meeting and parent/teacher conference held at 5:30 PM (with a meeting for the student’s sister following at 6:30 PM)
- February 8, 2018 parent/teacher conference held at 5:20 PM (with the conference for the student’s sister held at 5:50PM)
- February 27, 2018 meeting held at 3:00 PM to discuss Problem Solving Intervention Plan and reevaluation

Records indicate that the parent has been present at all these meetings.

Conclusions

As cited previously, the legal requirement for the school district is to schedule an IEP meeting at a "mutually agreed upon" time and place. The school is not required to schedule an IEP meeting at a time and place specified by a parent. Because staff members cannot be required to work outside their contracted school day, the district cannot assure that a properly constituted IEP team can be assembled outside of the school day.

In this case, the District has been willing to try to accommodate the scheduling request of the parent and has offered alternative methods for the parent to participate in the event he cannot leave work. With the exception of the first IEP Team meeting for the student in the district, all other IEP Team meetings have been scheduled outside the parent’s work hours. The parent has been present for all IEP Team meetings for the student. Under these circumstances, a violation of special education laws 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 laws and regulations on issues presented in this complaint. Therefore, no corrective actions are warranted.

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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Diana Durkin, Complaint Investigator

(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).

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools: 18FC___-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on March 6, 2018, by _____ on behalf of his son, _____. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services team at the Kansas State Department of Education (KSDE). Following the investigation, an Initial Report, addressing the allegations, was issued on April 4, 2018. That report concluded that there were no violations of special education statutes and regulations

Thereafter, on April 13, 2018, the parent filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the Initial Report, the parent's notice of appeal, the district's written response, and information contained in the complaint file at the KSDE. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

PRELIMINARY MATTERS

First, the Appeal Committee will limit its inquiry to the issues presented in the appeal. No new issues will be decided by the Appeal Committee. The appeal process is a review of the complaint report. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the complaint report.

DISCUSSION OF ISSUES ON APPEAL

ISSUE 5: The district conducted an evaluation of the student without parent consent.

In his appeal, the parent asserts that a special education teacher administered a phonological awareness screening in the Lexia reading program with the student, in a special education resource room, and did so without the written consent of the parent. That assertion is uncontested. Further, however, the parent asserts that the Lexia phonological awareness screening is a special education evaluation, and, as such, requires parent consent, which was not obtained by the district.

If the Lexia phonological awareness screening is a special education evaluation, then written consent of the parent is required. If it is not a special education evaluation, written consent of the parent is not required.

In special education law, the word "evaluation" is a defined term. It means using procedures in accordance with special education regulations to "determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." [See 34 C.F.R. §300.15]. Thus, whether any particular procedure constitutes an evaluation depends on the purpose of the procedure. If the purpose of the procedure is to determine whether a child has a disability or to determine the extent of the special education and related services the child needs, that procedure is a special education evaluation and requires parent consent. If the purpose of the procedure is not for determining whether the child has a disability or to determine the special education and related services the child need, the procedure is not a special education evaluation and does not require consent.

The Appeal Committee reviewed all of the information presented by the parties and reviewed the Lexia web site. Information on the Lexia web site supports the district's position that the phonological awareness interventions the district used constitute a reading instruction program that provides progress monitoring without actual testing, and is, in part, designed to support general education interventions. The Committee finds that the use of the phonological awareness assessment as a general education intervention is not an evaluation, as that term is defined in federal special education regulations.

The decision of the investigator, in Issue 5, that the general education interventions provided for this student did not constitute a special education evaluation and that consent was not needed for these general education activities is sustained.

ISSUE 6: The student is being pulled from his general education classroom to receive special education services that are not included in his IEP.

This student's IEP includes only one special education service. The student is to receive Speech/Language Therapy for thirty minutes, one time per week, in a special education classroom [See page 7 of IEP, under the title "Statement of Special Education/Related Services."] From this statement, the Appeal Committee finds that, except for this one thirty-minute Speech/Language Therapy session per week in a special education classroom, this student's IEP provides that the student will be in general education settings, taking general education coursework.

It is agreed by both parties that the student was being pulled from his regular education classroom for forty minutes, four days per week, to receive instruction from a special education teacher in a special education resource room. The parent asserts that this instruction is in contravention of the student's IEP because it is a special education service and it is being delivered in a special education classroom.

The evidence shows that this student was receiving general education interventions in the resource room, not special education services. The Appeal Committee notes that the investigator provided an excellent description of the general education intervention process and how that process differs from special education services. The fact that the general education interventions were provided in a resource room does not mean the student is receiving special education services. Resource rooms may be used for a variety of activities that do not include special education. In this situation,

there were nine students receiving instructional services, four of which were general education students. The student who is the subject of this complaint was considered a general education student, who was receiving general education interventions. On page 24 of the Initial Report, the investigator cites the general education intervention plan that was to be implemented. One of the interventions listed in that plan was: "The Childfind (sic)services (work with the special education teacher) would be provided 4 times a week for 40 minutes per session during the time differentiated reading instruction was being provided in the classroom." It is clear that this intervention was considered to be a "child find" activity, not a special education service. Moreover, because there was a mix of general education students and special education students in this room, it is considered a general education setting, not a special education setting.

The Committee agrees with the investigator's "Additional Comments" on page 27 of the report. Under Section 504 of the Rehabilitation Act, instructional supports made available for general education students, such as the general education interventions that were the subject of this complaint, must also be made available for children with disabilities. At the same time, when these interventions are provided by a special education teacher in a special education room with special education students present, there may be at least an appearance that special education services in a restrictive environment are being provided in excess of what is specified in the IEP. That would implicate a host of requirements, including an IEP meeting, prior written notice, and consent. In this case, however, the investigator stated that the district had set clear limits on the duration of the intervention, had (importantly) specified the general education purpose of the intervention, and had fully involved both parents in the decision-making process. The investigator noted that the outcome of this investigation may well have had a different outcome without these actions.

The conclusion of the investigator that there is no violation of special education statutes and regulations with regard to this issue is sustained.

CONCLUSION

The Appeal Committee has sustained the conclusions of the complaint investigator in the Initial Report on both issues that were appealed to the Committee. No corrective action is required.

This is the final decision on this matter, there is no further appeal. This Final Report is issued this 2nd day of May, 2018.

APPEAL COMMITTEE:

Laura Jurgensen

Kerry Haag

Stacie Martin

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON MARCH 6, 2018

DATE OF REPORT: APRIL 11, 2018

This report is in response to a complaint filed with our office by ____ and ____ ____ on behalf of their daughter, _____. In the remainder of this report, ____ _____ will be referred to as "the student" while ____ ____ will be referred to as "the father"; ____ _____will be referred to as "the mother"; and both will be referred to as "the parents." Note the investigation was extended by the Kansas Department of Education for seven days at the request of USD #___ due to the week-long scheduled spring break making staff unavailable to assist in the investigation.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD # ___ staff by telephone on March 12, March 14, March 28, March 29, March 30, and April 2, 2018. USD #___ made the following staff persons available as part of the investigation process:

- ____, Executive Director of Special Education
- ____ ____, Art Teacher
- ____ ____, Library Media Specialist
- ____ ____, Physical Education Teacher
- _____ _____, Adaptive Physical Education Teacher
- ____ ____, Assistant Principal
- ____ ____, Principal
- ____ ____, Special Education Teacher / Case Manager
- ____ ____, Music Teacher
- ____ ____, Fifth Grade Classroom Teacher

The Complaint Investigator also spoke to the parents by telephone on March 9, and March 23, 2018 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material provided by the parents:

- Invitation to Parent Panel from Ms. ____ to the parents dated January 4, 2018
- Meeting request letter dated November 10, 2017 from the parents to Ms.____, Ms.____, and Ms. ____
- Copies of Class Dojo communication logs for 2017-18 school year
- Copies of the student's Home/School Communication Notebook for the 2017-18 school year
- Email correspondence between the parents and school staff related to the meeting request dated November 12, 2017 and December 5, 2017
- Copy of the _____ Dispatch, the monthly school newsletter, dated March 23, 2018

Note that duplicate copies of several of the materials provided by the parents were also provided by the USD #___. In completing this investigation, the Complaint Investigator reviewed the following additional material provided by USD #___:

- Written Response to the Complaint prepared by Dr. ____
- Copy of the fifth grade class schedule for the 2017-18 school year
- Reevaluation/Continued Eligibility Report dated January 22, 2015
- Prior written notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 24, 2017
- Notice of Meeting (NOM) dated January 6, 2017 for an IEP team meeting on January 20, 2017
- Individual Education Plan (IEP) dated January 20, 2017
- IEP Service Delivery Schedule for January 2017 – January 2018
- Individual Nursing Plan dated September 3, 2013
- PWN for Evaluation or Reevaluation and Request for Consent dated January 4, 2018
- NOM dated January 4, 2018 for an IEP team meeting on January 17, 2018
- Reevaluation/Continued Eligibility Report dated January 17, 2018
- PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 17, 2018
- IEP dated January 17, 2018
- IEP Service Delivery Schedule for January 2018 – January 2019

- IEP Goal Progress Reports for Period 3 of the 2016-17 school year dated May 25, 2017
- IEP Goal Progress Reports for Periods 1 and 2 of the 2017-18 school year dated October 19, 2017 and February 8, 2018
- Copy of the Student Passport provided to the student's fifth grade teachers dated May 15, 2017 and written by Ms. ____ summarizing IEP Objectives, Accommodations/Modifications, Academic/Social Management Needs, and Special Needs
- Email correspondence and attachment dated March 5, 2018 from Ms. ___ to staff at ____ Elementary School regarding the development of the document titled "Building a Culture to Accommodate Differences / Meeting the Needs of All Learners"

Background Information

This investigation involves an 11 year-old girl who is enrolled as a fifth grade student at ____ Elementary School in USD #___. Records show the student was most recently reevaluated for continued eligibility for special education on January 17, 2018. It was noted that the student previously received services under the exceptionality of Multiple Disabilities and continues to have significant delays in communication, fine and gross motor skills. Her ability to participate in activities and instruction are compromised by her frequent seizures that can leave her tired and sleepy. Records indicate the student previously received special education services through the Shawnee Mission School District and has been receiving special education services since she has been enrolled in USD #___.

Issues

The complainant raised five issues which were investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegations cover the time period during the 2016-17 school year between March 6 and May 24, 2017 and the time period during the 2017-18 school year which began on August 15, 2017 through the present.

ISSUE ONE: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to the parent's request for an IEP team meeting on November 10, 2017 in a timely manner.

Findings:

The parents reported they requested to meet with school staff in an email dated November 12, 2017 and sent to Ms.____, Ms.____, and Ms.____. Attached to this email was a letter addressed to these three staff dated November 10, 2017 explaining the purpose of the meeting was to address six concerns as follows:

1) How field trips will be handled
2) The student's participation in music class
3) The student's participation in art class
4) The passing of information from various teachers to the parents
5) The student's placement in special education at ____ Elementary
6) The role of the principal and the special education director in the student's education

The parents reported that Ms. ____ and Ms. ____ acknowledged the meeting request when the father dropped the student at school on November 13, 2017; however, no meeting was scheduled until the parent sent a copy of the original meeting request letter to Dr. _____ and Dr. ____ ____, Superintendent, on December 4, 2017. Subsequently, a meeting was held with Ms.____, Ms.____, Dr.____, Dr. ____ and the parents on December 14, 2017. The parents acknowledge that they did not specifically request this meeting to be an IEP team meeting.

School staff at USD #___ acknowledged the letter and email requesting a meeting on November 12, 2017 was sent to the special education case manager and building principal. The email was also intended for the classroom teacher but an incorrect email was used and the email was not received by Ms. ____ at that time. USD #___ staff believes this was not a request for an IEP team meeting but instead a request for a meeting with the three specific staff members in particular. School staff reported that an IEP meeting would have included the student's related services providers.

Ms. ____ reported she spoke to the father on November 13, 2017 and began trying to arrange a meeting date and time with Ms. ____ and Ms.____; however, Ms. ____ was needing to miss work due to a family medical issue and it was proving to be difficult to find an agreeable time for all parties. Ms. ____ also reported she spoke to the father when he dropped the student off at school and

explained that the confusion with the field trip had occurred due to her family medical issues. When Ms. ____ later visited with Ms. ____ and indicated that the father was understanding of her situation and was no longer upset about the matter. Ms. ____ indicated that she believed the concerns had been addressed and that a meeting was no longer necessary. Ms. ____ acknowledged that she should have contacted the parent to confirm the parent's concerns had been addressed and that a meeting was no longer being requested.

Documentation and interviews show that a meeting was arranged for December 14, 2017 once the parents expressed their continued desire to hold a meeting in the email dated December 4, 2017. Documentation and interviews show the meeting was conducted on December 14, 2017 with the parents in attendance.

Federal regulations, at 34 C.F.R. 300.324(b) require that the IEP Team must review and, as appropriate, revise the IEP to address (1) Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate; (2) The results of any reevaluation; (3) Information about the child provided to or by the parents; (4) The child's anticipated needs; or, (5) Other matters. While some states have regulations that define a specific timeline for responding to a parent request to conduct an IEP team meeting, Kansas does not.

In this case, it appears the parents requested a meeting in writing to the special education case manager and the building principal on November 12, 2017. The parents included a list of six specific concerns to be addressed including the student's placement in special education which is an IEP team decision. While there was miscommunication initially between the parents and school staff regarding whether to proceed to with scheduling the meeting, once USD #___ staff were made aware of the parent's desire to hold the meeting on December 4, 2017, the meeting was scheduled and held on December 14, 2017 with the parent in attendance. Based on the foregoing, the allegation of a violation of special education laws and regulations related to failing to respond to a parent request for an IEP team meeting in a timely manner is not substantiated.

ISSUE TWO: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to provide the student an equal opportunity to participate in nonacademic and extracurricular services and activities during the 2017-18 school year.

Findings:

The parents allege that USD #___ has historically provided short notice, typically the day before up to a couple of weeks, for the student's field trips. The parent specifically reported they did not learn of the student's fifth grade field trip to participate in the Veteran's Day parade scheduled for November 10, 2017 until the day of the field trip. The parents reported a Class Dojo reminder was provided to all of the fifth grade students at 9:59 p.m. on November 9, 2017. The parent indicated they did not read this message until the morning of November 10, 2017 and contacted Ms.____, the classroom teacher, via a text message asking if this also included the student. The parents informed Ms. ____ that they wanted the student to participate in the field trip but learned that no prior arrangements had been made for the student to participate. The parents do acknowledge that Ms. ____ and Ms. ____ were able to make last minute arrangements for the student to participate in the Veteran's Day parade field trip with her fifth grade class. Since this incident, the parents reported they believe they have been provided with adequate notice and information regarding the additional field trips scheduled for fifth grade including trips to STARBASE and Rock Springs.

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

Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education available to all children residing within the district. 34 C.F.R. 300.17 defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

The findings of Issue One are incorporated herein by reference.

Ms. ____ and Ms. ____ reported that the fifth grade participates in the Veteran's Day parade on an annual basis. Typically, Ms. ____ makes arrangements for the special transportation needs of the students in her special education classroom to attend as part of her class and then meets the other classrooms at the parade. However, this year Ms. ____ decided that her class would not participate due to her family medical issues. Ms. ___ and Ms. ____ planned to

visit with the student's parents about this decision at the parent teacher conferences held on October 25, 2017. However, Ms. ____ was absent on that date due to her family medical issues and the parents did not meet with Ms. ____ on that evening. Ms. ____ and Ms. ____ did not realize that neither of them had communicated with the parents about the plans for the Veteran's Day field trip.

Ms. ____ and Ms. ____ acknowledge that the parents were not informed of the plans for the field trip until the message that was sent on the Class Dojo on November 9, 2017. Both teachers also acknowledge that arrangements were only made for the student to participate once the parent contacted them on November 10, 2017, the morning of the field trip. While no lift bus was provided, Ms. ____ and Ms. ____ were able to make arrangements that morning for the student to ride the bus with her fifth grade classmates by having her carried/assisted up/down the steps of the bus and use a car seat while on the bus. The student was accompanied by a paraprofessional and used an umbrella stroller to participate in the Veteran's Day parade field trip.

The IEP in effect on November 10, 2017 was developed at the annual IEP team meeting held on January 20, 2017. That IEP required transportation as a related service, specifically use of a car seat with a harness and *"to keep her upright if she has a seizure for the times she might ride a bus for field trips or to therapy."* That IEP also requires "*Attendant Care – A non-instructional Para educator (Personal care and feeding)."*

In this case, documentation and interviews found that the parents were not provided with the same amount of notice to participate in the Veteran's Day parade field trip as the student's fifth grade peers due to miscommunication between the regular education teacher, special education teacher, and the parents. However, once the parents informed USD #___ staff of their intent for the student to participate in the Veteran's Day parade field trip on the morning of the field trip, arrangements were made that complied with the requirements of the IEP so that the student was provided with an equal opportunity to participate in the field trip and ultimately did participate in the field trip on November 10, 2017. Based on the foregoing, the allegation of a violation of special education laws and regulations related to failing to provide the student with an equal opportunity to participate in extracurricular and nonacademic activities is not substantiated.

ISSUE THREE: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically by not

providing the special education services and the required accommodations/modifications in the art, music and physical education classes during the 2017-18 school year.

Findings:

The parents believe the student is not being included in the general education environment as required by the IEP. The parents reported these concerns are specifically related to her participation in the fifth grade art, music and physical education (PE) classes.

The parents concern with the music class is based on the student's lack of participation in fifth grade fall music concert held on October 19, 2017. The parents reported the student *"was outside of the students, more than 4 feet away from the closest student, and was never engaged in any aspect of the concert throughout the duration."* The mother indicated that she spent three weeks, two times per week during the fourth grade school year assisting Ms.____, the student's music teacher in both fourth and fifth grades, with ideas for how to include nonverbal students in the music program through use of Big Mac switches as well as how to adapt choreography and even instructed peers on how to provide hand-over-hand assistance if needed. Despite this previous assistance, the parents reported "there was no sign of inclusion whatsoever" during the fifth grade music concert.

The parents believe the inclusion of the student in the music concert is an indicator of how the student is included in the weekly music classes. The parent is also concerned that the student's new communication device has not been programmed to allow for greater participation in the music class.

The parent's reported the student has therapy during the scheduled fifth grade art class on Friday mornings so the student rarely attends. When she does attend, the parents believe the art lesson is not adapted so the student often sits and watches or colors in the back of the classroom. The parents report that Ms. _____, the student's art teacher since first grade, stated at the February 14, 2018 parent teacher conference that she was unaware that the student had adaptive scissors in the special education classroom. The parents noted that Ms. ____ has a scheduled time to provide art instruction to the students in the special education classroom; however, Ms. ____ does not take her class to the art class during this time because of a scheduling conflict with lunch.

The parents initially reported concerns with the student's inclusion in the fifth grade PE class as well. Interviews with the parents, Mr. Day, and Ms. _____ subsequently found all parties agreeing that the student is regularly included in PE games. The parents reported that "upon discussion with her teacher later, we have been informed that adaptations are being made and this area is being handled appropriately." For this reason, PE will not be addressed further in the findings.

Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP. Federal regulations, at 34 C.F.R. 300.320(a)(4), requires the IEP to include a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

The findings in Issue One and Issue Two are incorporated herein by reference.

Documentation found that two IEPs were in effect during the past 12 months. The first IEP was developed at the annual IEP team meeting held on January 20, 2017 and the second IEP was developed at the annual IEP team meeting held on January 17, 2018.

It is noted that both of these IEPs included the following statement for the extent of participation in regular education:

"*The student will attend music, PE, assemblies, field trips and special class parties with her same age peers in the regular education setting. The rest of her day will be spent in therapies or in the special education classroom. Recess will be with her peers when possible. The student will participate in the academic portion of the regular education day for science and social studies as the activity allows. The skills that they are focusing on and how she participates may be different. She will not be graded on the part of her day in regular education. The student also requires the flexibility to rest when necessary as a result of her seizures.*"

The January 20, 2017 IEP required special education services for music for 30 minutes three days per week in a general education classroom. It is noted that

participation in art class is not addressed in this IEP. The IEP included the following accommodation/modification in all areas on a daily basis:

> "*The student requires constant supervision throughout her day at school. She has multiple seizures in a day's time, some are Grand Mal and other may be a head drop. Some of those cause her to fall asleep afterwards. She might also vomit. She may wear a helmet and mouth guard during part of her day during some therapies. She is also very unsteady on her feet at times and needs monitored so that she does not get hurt. She needs help with all her feeding, toileting, dressing, and self-care. She will soon have a new communication system but it currently is not in use. In the meantime, she does not have a means of communication with others (except through yes/no answer card) and her attention to task is limited to seconds."*

The January 17, 2018 IEP requires special education services in a general education classroom for 60 minutes on Monday and Wednesday; for 90 minutes on Tuesday and Thursday; and for 120 minutes on Friday. It is noted that this IEP does not specify the exact times required for participation in any of the regular fifth grade classes. This IEP includes the following accommodation/modification in all areas on a daily basis:

> "*The student requires constant supervision throughout her day at school. She has multiple seizures in a day's time, some are Grand Mal and other may be a head drop. Some of those cause her to fall asleep afterwards. She might also vomit. She may wear a helmet and mouth guard during part of her day during some therapies. She is also very unsteady on her feet at times and needs monitored so that she does not get hurt. She needs help with all her feeding, toileting, dressing, and self-care.*

Documentation and interviews found the student is currently scheduled to attend the fifth grade music class for 30 minutes from 9:15 -9:45 a.m. on Monday, Wednesday and Fridays as well as to attend the fifth grade PE class for 45 minutes from 9:30 to 10:15 a.m. on Tuesdays and Thursdays during the 2017-18 school year. Ms. ____ reported the remainder of the special education services in the general education classroom include time spent in the fifth grade science, social studies, and part of the art class following therapies.

Ms. ____ and Ms. ____ reported and documentation including the Reevaluation/Continued Eligibility Report reflects that the student has frequent seizures which cause the student to be tired and sleepy and the student's ability to participate in activities and instruction is compromised. When these seizures

occur, Ms. ____ regularly keeps the student in the special education classroom to allow her to recover from seizures resulting in many absences from the regular education classroom setting.

Ms. ____ reported that the student only attended the art class once during first semester and has only attended four art classes thus far during second semester. When the student is able to attend, the student is seated near the back of the classroom near the restroom at a higher table. The student receives special education instruction and assistance from the paraprofessional in the art classroom. Ms. ____ described several art activities the student has participated in including working with clay, tracing her hand, and creating a texture collage.

Ms. ____ acknowledged that a pair of adaptive scissors was kept in the special education classroom but were not brought to the art class for the student's use. Ms. ____ reported that a second pair of adaptive scissors has now been ordered for the student to keep and use in the art classroom. Ms. ____ and Ms. ____ both acknowledged that the assigned time for the special education class to have a second art class was only used on a couple of occasions during the school year due to a conflict with the lunch schedule.

Ms. ____ reported that the student did not have a speaking part in the fifth grade music program due to several absences from class during first quarter. The student was placed in the center of the two risers of students during the morning music program at the school; however, the two risers were pushed together during the evening music program. Ms. ____ reported that she was unaware of the change in the riser arrangements until the evening music program was ready to begin thus resulting in the student being placed to the side of the risers by the paraprofessional.

Ms. ____ indicated the student appears to enjoy the music class as demonstrated by her increased attention to the songs and music. The student is provided the same musical instruments as her peers such as drums and the ukulele and the paraprofessional then helped the student to interact with each instrument. The student has also participated with paraprofessional support in the folk dancing unit. Ms. ____ acknowledged that she was unfamiliar with the student's newer communication system and was unaware that this device could assist the student in participating more fully in the music memory activities involving both sound and visual representation on the white board.

In this case, interviews and documentation support that USD #___ did provide the required special education services and accommodations/modification in the

regular education setting as required by the student's IEP, specifically in the music and art classes during the 2017-18 school year. While there are additional adaptations that could be implemented using the student's new communication system, there is evidence that adaptations to the classroom lessons have been made in both the regular fifth grade music and art classes to allow the student to participate as described in the IEP as "*The skills that they are focusing on and how she participates may be different."* Based on the foregoing, the allegation of a violation of special education laws and regulations related to implementing the IEP as written in regards to special education services and accommodations/modifications is not substantiated.

ISSUE FOUR: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to provide special education and related services in the least restrictive environment, specifically the school the student would attend if not disabled during the 2017-18 school year.

Findings:

The parents indicated that their neighborhood school is _____ Elementary School but that they are "forced" to send the student to ____ Elementary School due to the special education services that are available in that building. The parent indicated the special education services the student receives inside the special education classroom are not the concern; rather they report their real concern as "the climate of lack of inclusion that exists once students step out of the special education classroom" at ____ Elementary School. The parents stated "If this is what inclusion looks like in all schools, then the student is just as well off in our home school."

Federal regulations, 34 C.F.R. 300.116, require the educational placement of students with disabilities be determined annually based upon the needs of the student as described in the IEP and be in the least restrictive environment. State regulations, at K.A.R. 91-40-1(t), states that educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school.

The Office of Special Education Programs (OSEP) further clarified "as close as possible to the child's home" in Letter to Trigg (11/30/2007) which stated "*Historically, we have referred to placement as points along the continuum of placement options available for a child with a disability and location as the*

physical surrounding, such as the classroom, in which a child with a disability receives special education and related services Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement".

USD #___ acknowledges that _____ Elementary School is the student's neighborhood school. However, interviews and documentation show that when the student initially enrolled in USD #___ in first grade, the IEP team at the time convened to determine the least restrictive environment for the student based on her unique needs as described in the IEP and determined that the student's IEP could not be implemented at _____ Elementary School even with the use of supplementary aids and services.

The IEP team initially determined that the least restrictive environment (LRE) for the student was a special education classroom for students with significant needs located in a general education building such as the district's Life Skills program for students participating in a curriculum focusing on the Essential Elements of the Dynamic Learning Maps. Documentation shows this same determination was also made at the January 20, 2017 annual IEP team meeting and again at the January 17, 2018 annual IEP team meeting. Both of these IEPs document that the student will attend a district program that is not located within her home school.

Interviews and documentation show that ____ Elementary School is the host site for the Life Skills program in USD #___. It is noted that the student has been assigned to attend ____ Elementary School since her enrollment in the district in first grade and this continues to be the assigned school building for the student.

In this case, documentation and interviews found the student's placement was determined annually at the IEP team meetings held on January 20, 2017 and January 17, 2018. Based upon the placement required by those IEPs, the student was assigned to the ____ Elementary School, the district building which hosts the Life Skills program required by the student's IEP. Based on the foregoing, the allegation of failing to provide special education and related

services in the least restrictive environment, specifically the school the student would attend if not disabled during the 2017-18 school year is not substantiated.

ISSUE FIVE: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to assess and ensure the effectiveness of efforts to educate children with disabilities.

Findings:

The parents believe that USD #___ has failed to assess and ensure the effectiveness of their special education program, particularly outside the special education classroom at ____ Elementary School. The parents believe the student is not being included effectively in the regular education classrooms as required by the IEP.

Federal regulations, at 34 C.F.R. 300.320(a)(3)(ii), require public agencies to provide a report on the progress the child is making toward meeting the annual goals on the IEP such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.

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

Two IEPs have been in effect for the student during the past 12 months. Both IEPs show the frequency of progress reporting as three reporting periods which is as often as provided to parents of non-disabled students.

Documentation and interviews with Ms. ____ showed the student received Student Progress Reports dated May 25, 2017 for Marking Period 3 in the 2016-17 school year. In addition, documentation and interviews found the student received Student Progress Reports dated October 19, 2017 for Marking Period 1 and again dated February 8, 2018 for Marking Period 2 during the 2017-18 school year. It is noted that these are the same Marking Periods used for the non-disabled students in USD #___.

Each of these Student Progress Reports was completed by Ms. ____ and summarized the student's progress towards the IEP goals in effect during that Marking Period. The student's IEP dated January 20, 2017 included goals related to increasing functional expressive language skills, choosing items

needed for an activity, increasing eye/hand coordination, responding to questions related to material read to her, increasing daily living skills by putting on her shirt, and improve gross motor skills by transitioning from sit to stand. The student's IEP dated January 17, 2017 included goals related to increasing functional expressive language skills, identifying items needed for an activity, reaching out and touching the hand of the person in front of her during a greeting, increasing gross motor skills to assist in transitions and walking, and increasing daily living skills by putting on her shirt, brushing her hair or teeth, and wiping her face.

In this case, USD #___ was to provide IEP goal progress reports at the end of each of three reporting periods which is as often as provided to parents of non-disabled students. Documentation and interview found that progress towards the student's IEP goals was reported for each of the three Marking Period occurring during the past 12 months as required by the IEP. It is noted there is no requirement beyond reporting progress towards the IEP goals is required by the IDEA. Based on the foregoing, the allegation of a violation of special education laws and regulations related to reporting IEP goal progress is not substantiated.

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

KANSAS STATE DEPARTMENT OF EDUCATION
EARLYCHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
HUTCHINSON UNIFIED SCHOOL DISTRICT #___
ON APRIL 9, 2018

DATE OF REPORT: MAY 4, 2018

This report is in response to a complaint filed with our office by _____ on his own behalf. ____ will be referred to as "the student" in the remainder of this report. His mother, _____, will be referred to as "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with _____, Director of Special Education, on April 13, 16, 27, and 30 and May 1, 2018.

The investigator spoke by telephone with the student and the parent on April 18, 2018. The student gave verbal consent at that time for the parent to speak on his behalf regarding this complaint.

In completing this investigation, the complaint investigator reviewed the following material:

- High School Transition/Vocational Rubric dated October 11, 2016
- Future Outcomes/Goals Assessment (ESTR-J) dated October 11, 2016
- Notice of Meeting dated February 1, 2017 (2 copies provided by the student)
- Special Education Evaluation/Reevaluation Report dated March 24, 2017
- Conference Summary dated March 24, 2017
- IEP for this student dated March 24, 2017 (signed by the student on April 5. 2017)
- Teacher Information Page dated March 24, 2017
- Accommodations/Modifications for Instruction and Assessment from the student's March 2017 IEP
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 24, 2017
- Seizure – Individualized Health Care Plan for 2017
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated January 31, 2018
- Summary of Performance and Recommendations dated January 31, 2018
- Post School Outcomes Summary completed on January 31, 2018

- Addition and Deletion Notice completed on January 31, 2018
- Notice of Meeting dated March 16, 2018
- Email dated March 22, 2018 from the student's Case Manager to team members
- Email correspondence dated April 10 to April 12, 2018 between the student's Case Manager and the parent
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated April 12, 2018
- Teacher Information Page revised April 12, 2018
- IEP for the student dated April 12, 2018
- Attendance Record Medicaid Services 2017-18
- Treatment Notes compiled by the Speech/Language Pathologist for the period of November 8, 2017 to February 21, 2018
- Family Access Calendar covering the period of November 1, 2017 to May 25, 2018
- Online calendar for the district

Background Information

This investigation involves an 18-year-old male who is enrolled in the 12th grade. The student has been diagnosed with a seizure disorder and seasonal allergies.

The results of a reevaluation conducted in March of 2017 indicated that the student no longer was in need of special education in the area of speech and language, and the district team proposed that he be exited from speech/language services. However, the parent did not consent to the district's proposal, and the district continued to provide services.

The student has a history of frequent absences from school. During the second and third trimester of the 2017-18 school year, records indicate that he missed all or part of more than 30 days of school, the majority of which were excused absences. During the months of March and April 2018, the student has missed all or part of 15 school days.

The student had accumulated all of the credits needed for graduation by the end of the second trimester of the 2017-18 school year. However, his diploma will not be awarded until May 20, 2018.

Issues

In his complaint, the student outlines the following issue:

During the second trimester of the 2017-18 school year, the district failed to provide any of the speech/language services specified in the student's IEP. Additionally, the district failed to reinstate speech/language services for

the student once he returned to the district after briefly exiting school on February 22, 2018.

Applicable Special Education Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101, require public schools to make a free appropriate public education (FAPE) available to children with disabilities; and 34 C.F.R. 300.17 defines FAPE, in part, as special education and related services provided in conformity with an IEP.

The IDEA and its implementing regulations do not specifically address the issue of services missed due to the absence of the student from school. However, the Office of Special Education Programs (OSEP) has opined that if a student is not in attendance at school and the special education services called for in the student's IEP are available at the time of the student's absence, those services do not need to be made up (see Letter to Balkman, 23 IDELR 646, OSEP 1995). Quoting the letter as follows:

> "…the general rule is that if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services if the disabled student is absent from school at that time for reasons other than his or her participation in school-sponsored activities."

If a student withdraws from and subsequently reenrolls in the public school, the student is entitled to receive services until graduation with a regular education diploma.

Student's Position

It is the contention of the student and the parent that the district failed during the entire second trimester and the majority of the third trimester of the 2017-18 school year to provide the speech/language services called for in the student's March 2017 and April 2018 IEPs.

District's Position

The district stipulates that some speech/language services were not delivered to the student as specified in his March 2017 IEP, but argues that the majority of missed sessions were the result of the student's absence from school. The district contends that confusion regarding services arose when the student withdrew from school at the end of the second trimester after attaining all credits needed for graduation and then subsequently re-enrolled. According to the district, the Speech/Language Pathologist was for a time unaware that the student had returned to school and then delayed in providing services pending an annual review of the student's IEP.

Speech/Language Services Specified in the Student's March 2017 and April 2018 IEPs

The "Related Services" section of the student's March 2017 IEP contains the following statement":

> "(The student) will continue to receive speech/language services once a week for 30 minutes each session for 33 of the 36 weeks covered by this IEP."

The "Anticipated Services" section of the March 2017 IEP also shows that the student was to be provided with 30 minutes of special education services in a special education setting 1 day per week starting August 18, 2017 and ending March 24, 2018.

The "Related Services" section of the student's April 12, 2018 IEP contains the following statement:

> "Initiation Date: Beginning 04/12/2018, (the student) will receive direct speech services once a week for the next six instructional weeks for 20 minutes each session. Speech services will be primarily in a pull-out, individual setting within the speech resource room to allow for practice and demonstration of skills."

Prior written notice regarding the 10-minute reduction in service minutes was provided to the student on April 12, 2018. The student has not to date consented to the proposed change.

The "Related Services" sections of both the student's March 2017 IEP and his April 2018 IEP contain the following statement:

> "…In addition, when provision of the regularly-scheduled special education and related services is not possible due to events that are beyond the control of the school, such as school closure due to weather or other emergencies, emergency drills, ***or when the child is absent from school, compensatory services will not be provided*** (emphasis added). Special education services will not be provided when school is not in session according to the District Calendar."

Investigative Findings

During the second and third trimesters of the 2017-18 school year, the student was scheduled to receive 30 minutes of speech/language service on Wednesdays. The second trimester for the district began on November 13, 2017 and ended on February 23, 2018. The third trimester for the district began on February 26, 2018 and will end for seniors on May 17, 2018.

According to the Speech/Language Pathologist (SLP), he has told those students who receive services on Seminar days (Wednesdays) that he will be in the building and ready to provide services unless he sends the student a text message to the contrary. If a student is enrolled in classes on Wednesdays rather than participating in Seminar (as was the case with this student) and does not arrive for a scheduled session, it is the standard practice of the SLP to attempt to locate the student by going to the student's assigned classroom. If unable to track down the student, the SLP checks "Skyward" – the district student information system – to see if the student has been marked absent. If the student is not in school, the SLP notes the absence on a form entitled "Attendance Record Medicaid Services."

The SLP also maintains treatment records for each student. According to treatment notes regarding this student which were submitted by the Speech/Language Pathologist, services were provided to the student on November 15, 2017. The student was seen individually and worked on prefixes and suffixes. There was no school on November 22, 2017 because of Thanksgiving Recess. The student was again seen for individual service on November 29, 2017 for a 30-minute session as was the case on December 6, 2017.

On December 13, 2017, the student was absent from school. The Christmas-New Year's Recess began on December 20, 2017 and extended until January 3, 2018. The student was absent from school on January 3, 10, and 17, 2018.

Treatment notes show that the student received speech services on January 24, 2018. On January 31, 2018, services were offered to the student, but records indicate he opted to remain in class to work on a project for a class.

In January, the student contacted his Case Manager to inform her that he wanted to be a second trimester graduate. Early graduation is not an uncommon practice in the district. Of the 304 seniors at the high school for the 2017-18 school year, 15 were first trimester graduates, and 84 were second trimester graduates. Ten of those 99 early graduates had been receiving special education services. Early graduates are awarded diplomas during a ceremony at the end of the school year.

The student had earned 25 credits at the end of the first trimester and accumulated an additional 1.5 credits during the second trimester for a total of 26.5 credits, .5 more than required for graduation.

The Case Manager met with the student on January 31, 2018 to complete necessary exit paperwork which included the following:

- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent (signed by the student)
- Post School Outcomes Summary (initialed by the student)

According to the prior written notice signed by the student, he was exiting special education services with an anticipated graduation date of February 22, 2018 (although the student would not receive his diploma until May 20, 2018).

The Case Manager also completed a "Summary of Performance and Recommendations" form which she shared with the student along with an "Addition and Deletion Notice" showing that the student's last day in the program would be February 22, 2018.

The Case Manager notified the Access Coordinator with the local community college regarding the need for a meeting with the student to discuss his attending classes at the school in the Fall of 2018. (This contact was referenced in the "Summary of Performance" document.) A meeting was scheduled for February 21, 2018. The parent cancelled that meeting on February 20, 2018.

The student was absent on February 7, 2018 but received speech/language services on February 14, 2018. According to treatment notes provided by the district, the SLP met with the student and discussed "questions he may have going into finals week...was able to recall def(inition) of ant(onyms)/ syn(onyms)/ root word." On February 21, 2018, the SLP met with the student after his finals and wrote in his treatment notes that the student "did not want to meet one last time" before exiting school.

The student stopped attending school on February 22, 2018. On March 1, 2018, the student contacted his Case Manager and asked if he could again have a class schedule. A schedule was created under which the student would come to school for 3rd hour as a student aide and would attend a 4th hour JAG class (a readiness for college course). Under the schedule, the student would attend school from 11:30 AM to 2:04 PM each day.

The student was absent on March 5th and 6th and returned to school for the first time on March 7, 2018. The SLP was not, however, aware that the student had returned to school until March 16, 2018. No services were provided on March 7, 14, or 21, 2018 even though the student attended school on those dates. The student's March 2017 IEP was due for an annual review, and an IEP meeting was scheduled for March 22, 2018. On March 22, 2018, the student was absent from school. The district attempted to conduct the IEP meeting via conference call but the parent stated that the student was too ill to participate.

The district's Spring Break extended from March 24 to April 2, 2018. On April 3 and 6, 2018, the student's Case Manager met with the student to reschedule the

IEP meeting. The student was absent on April 4, 2018. An IEP Team meeting date of April 12, 2018 was confirmed on April 10, 2018. The student was in attendance at school on April 11, 2018, but no speech/language services were provided.

The IEP Team meeting was held via conference call with the student and parent on April 12, 2018. The student was presented with prior written notice of the district's proposal to reinitiate speech services to the student once per week for 20 minutes per session beginning April 12, 2018. As of writing of this report, the student has not yet provided consent for a change in services and the district has continued to offer 30 minutes of speech/language services per week. The student was absent on April 18 and 25, 2018. Speech/language services were provided to the student on May 1, 2018.

Conclusions

The student could have received speech/language services for a total of 12 days during the second trimester of the 2017-18 school year. The student received services on 5 of those days. The student was absent on 5 service days and declined services on 2 days.

During the third trimester which began on February 23, 2018, the student was not enrolled in and did not attend school from February 22 until March 7, 2018. The district did not provide service on 3 days in March when the student was in attendance and failed to provide service on 1 day in April when the student was present at school. The student has been absent on 4 days when services were available and could have been provided.

While the district is not required to provide compensatory services for days when services were available but the student was absent, the district has failed to provide the student with a total of 120 minutes of speech/language services (four 30-minute sessions). Under these circumstances, a violation of special education laws and regulations is substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, a violation has been substantiated with regard to 34 C.F.R. 300.17 which requires the district to provide FAPE to the student in conformity with the student's IEP.

Therefore, USD #___ is directed to take the following actions.

1) Submit, within 15 days of the receipt of this report, a written statement of assurance to Early Childhood, Special Education, and Title Services

stating that it will comply with 34 C.F.R. 300.17 by implementing this student's IEP as written.

2) Within 5 days of the receipt of this report, present to the student a plan for the provision to the student of 120 minutes of compensatory speech/language services.

    a. This offer of compensatory services shall be in addition to the educational services currently being provided, and may be offered outside of regular school hours or school days.
    b. The offer of compensatory services should be provided to the student in writing via email and US mail. A copy may also be presented to the student in person.
    c. The plan should be developed in a manner that will allow all compensatory services to be provided prior to the student's graduation on May 20, 2018.
    d. The student shall have the option to accept or reject any portion of the offered services.
    e. Should the student fail to respond to the district's proposal by accepting or rejecting any portion of the services offered prior to the date that compensatory services are to be offered, the district shall construe that lack of response as a rejection of the district's proposal.

3) Within 5 days of the receipt of this report, provide to Early Childhood, Special Education, and Title Services a copy of the proposed plan for the provision of compensatory services referenced above under Item 2.

4) Upon completion of the delivery of compensatory services, or within 5 days of the last proposed compensatory service date, the district shall provide a summative report to Early Childhood, Special Education, and Title Services regarding the student's response to the district's proposed plan and the delivery of compensatory services if the student has opted to receive those services.

Further, USD #___ shall, within 10 days of receipt of this report, submit to Student Support Services one of the following:

a) A statement verifying acceptance of the corrective action or actions specified in this report;

b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (c).

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, Early Childhood, Special Education, and Title Services, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____
Diana Durkin, Complaint Investigator

(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).

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools: 18FC___-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on April 9, 2018, by _____, an adult student. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, an Initial Report, addressing the allegations, was issued on May 4, 2018. That report concluded that there was a violation of special education statues and regulations, and ordered a variety of corrective actions, among which was to provide the student with a plan for the provision of 120 minutes of compensatory speech/language services.

Thereafter, on May 11, 2018, the student filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the report, the student's notice of appeal, the district's written response, and information contained in the complaint file at the Kansas State Department of Education (KSDE). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

PRELIMINARY MATTERS

The Appeal Committee will limit its inquiry to the issue presented in the appeal. No new issues will be decided by the Appeal Committee. The appeal process is a review of the Initial Report. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Initial Report.

DISCUSSION OF ISSUES ON APPEAL

The complaint involved one issue. The student alleged that he did not receive speech services for second semester, November 2017 to January 2018, and that as of March 22, 2018, he was still not getting this service.

In his appeal, the student says he received only 15 of the 30-minute sessions of speech services required by the IEP, and so he missed 21 sessions. However, the original complaint only alleges that the student did not receive services from November of 2017. Accordingly, the investigator limited her investigation to the second and third trimesters, which began on November 13, 2017 and extended to the date of the investigator's report.

The investigator found that the student did not receive all of the speech services in his IEP. The investigator concluded that the student should have received an additional 120 minutes of speech services.

The student's notice of appeal further states that there is supporting documentation for additional missed services, but the investigator never bothered to ask for it. In Mr. Mark Ward's May 16, 2018 letter to the district and to the adult student confirming receipt of the appeal, he stated:

"On appeal, the Committee does not conduct a new investigation. The Committee's function will be to determine whether evidence exists to support the findings and conclusions in the Report issued in response to the complaint. Any party wishing to submit evidence for the review must do so by May 25, 2018. Evidence may be submitted to me by e-mail, at mward@ksde.org."

The student did not submit any of the supporting documents to which he referred in his notice of appeal. On the other hand, in her Initial Report, the investigator concluded that much of the missed speech services were due to the student's failure to attend school. In forming that conclusion, the investigator reviewed the district student information system "Skyward" to calculate the number of service dates the student was absent. The investigator also reviewed the school calendar and the treatment records assembled by the Speech/Language Pathologist. From this data, the investigator concluded that the student should have received an additional 120 minutes of speech services. The Appeal Committee was presented with no evidence of error in the calculations of the investigator.

CONCLUSION

All findings and conclusions in the original report are sustained.

This is the final decision on this matter, there is no further appeal. This final decision is issued this 7th day of June, 2018.

APPEAL COMMITTEE:

Kerry Haag

Kerry Haag

Laura Jurgensen

Laura Jurgensen

Stacie Martin

Stacie Martin

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON MARCH 6, 2018

DATE OF REPORT: APRIL 5, 2018

This report is in response to a complaint filed with our office by _____ on behalf of his son, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the father" or "the parent."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ by telephone on March 12, March 13, and March 30, 2018. USD #___ made the following staff persons available to be interviewed:

- F__, Director of Special Education
- Fa__, Principal at _____ High School
- S--, Assistant Principal at _____ High School
- LJ, Special Education Teacher and Case Manager
- KM, Special Education Teacher
- LM, School Psychologist
- EM, School Counselor
- TG, School Counselor
- SP, Science Teacher
- WD, Math Teacher
- ZG, Furniture Design and Residential Carpentry Teacher
- LT, English Teacher
- SW, Freshman Health Teacher

The Complaint Investigator also spoke to the father by telephone on March 9, and March 23, 2018 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Prior written notice (PWN) for initial evaluation dated September 9, 2016

- Evaluation/Eligibility Report dated November 18, 2016
- Individual Education Plan (IEP) dated November 18, 2016
- Progress Report dated March 10, 2017
- Progress Report dated May 17, 2017
- Progress Report showing undated as well as dated November 8, 2017
- IEP dated November 8, 2017
- PWN for Reevaluation dated February 21, 2018
- Discipline Record for the student dated between December 13, 2017 and March 12, 2018
- Copy of Confidential IEP Information for the IEP dated November 8, 2017 from the student information system, Skyward
- Functional Behavior Data Collection Sheets dated between January 22 and March 2, 2018
- Copies of the student's planner dated March 12 through March 15, 2018
- Copy of the student's Action Plan presented at the November 8, 2017 IEP team meeting
- Email correspondence between October 5, 2017 and March 15, 2018 from/to LJ regarding the student
- Email correspondence between December 30, 2017 and March 16, 2018 from/to F__
- Email correspondence between October 20, 2017 and March 16, 2018 from/to EM/TG
- Email correspondence between January 8 and March 8, 2018 from/to LM
- Email correspondence between January 2 and March 13, 2018 from/to LT
- Email correspondence between September 26, 2017 and March 2, 2018 from/to SP
- Log entries between January 10 and March 31, 2018 for Applied Algebra class
- Log entries between January 9 and March 12 for Study Skills class
- Log entries between January 9 and February 7, 2018 for Science class
- Email correspondence between the father and LJ dated November 4, 2017
- Email correspondence between the father and LJ dated December 18, 2017
- Email correspondence between the father and LJ dated February 28 and March 1, 2018
- Copy of the student's planner dated February 26, 2018
- Copy of parent notes for November 30, December 4, December 6, 2017, and January 10, 2018

- Copies of the USD #___ school calendars for the 2016-17 and the 2017-18 school years

Background Information

This investigation involves a 15 year-old boy who is enrolled as a ninth grade student at ____ High School in USD #___. Records show the student was initially evaluated for special education on November 18, 2016 with the primary concern noted as having difficulty writing things down in his planner/agenda, not being organized, and having difficulty getting his assignments completed and turned in on time. The student was found eligible for special education services under the eligibility category of Other Health Impaired due to a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). The student has been receiving special education services since that time.

Issues

The complainant raised four issues which were investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegations cover the time period during the 2016-17 school year between March 6 and May 17, 2017 and the time period during the 2017-18 school year which began on August 16, 2017 through the present.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with a copy of the IEP in a timely manner, specifically the IEP developed at the November 8, 2017 IEP team meeting.

Findings:

Interviews and documentation show the father did not receive a copy of the IEP that was developed at the annual IEP meeting held on November 8, 2017 until December 18, 2017. Interviews and documentation show a draft copy of the IEP was provided to the father and that the father provided written corrections, concerns, and suggestions to draft IEP via email to LJ, Special Education Teacher and Case Manager, on November 4, 2017.

The IEP team meeting was held on November 8, 2017. The father provided consent for USD #___ to email school documentation on November 15, 2017.

An email from Ms. LJ dated November 16, 2017 indicated that the IEP had been entered into the computerized system. An email from Ms. LJ on November 27, 2017 indicated that the IEP was no longer marked as "draft" in the computerized IEP system but was unsure if this was the final version of the IEP. The father indicated he verbally requested a copy of the final version of the November 8, 2017 IEP from Ms. LJ on December 6, 2017.

An email from Ms. LJ to the father dated December 18, 2017 shows the final version of the November 8, 2017 IEP was attached. Ms. LJ stated *"This is the student's Final IEP. The only reason we would need to go over this again is possibly to sign again agreeing to the changes (adding accommodations, but keeping support in all classes). The only thing they really had me change was the Prior Written Notice which I hadn't originally added enough detail to about what stayed the same."*

Federal regulations, at 34 C.F.R. 300.322(f) require that the public agency must provide the parent with a copy of the IEP at no cost. There is no federal requirement for a specific timeline for the copy of the IEP to be provided, only that the copy is provided at no cost to the parent. While some states have regulations that define a specific timeline for the provision of the copy of the IEP to the parent, Kansas does not.

In this case, it appears USD #___ provided the father with a final copy of the November 8, 2017 IEP on December 18, 2017 via email and at no cost to the parent. Based on the foregoing, the allegation of a violation of special education laws and regulations related to providing the parent with a copy of the IEP at no cost is not substantiated.

> **ISSUE TWO:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to provide the parent of the student with periodic reports of student progress as required by the IEP during the past 12 months.

Findings:

The father reported that he did not receive any copies of the student's IEP goal progress reports during the past 12 months. He believes this was in part due to multiple changes in the student's special education case manager. The father reported Laura Kidwell was the special education teacher/case manager during eighth grade; in ninth grade, KM was the special education case manager beginning in August through mid-October, 2017; LJ was the special education case manager from mid-October through December, 2017; Heather Gardner was the special education case manager during January, 2018; and then Ms. LJ was reassigned as case manager in February, 2018.

Federal regulations, at 34 C.F.R. 300.320(a)(3)(ii), require public agencies to provide a report on the progress the child is making toward meeting the annual goals such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.

Two IEPs have been in effect for the student during the past 12 months. The first IEP was dated November 18, 2016 and included two goals. One goal is to increase work habits through the use of a rubric and the other goal is to recite the steps of a problem solving strategy. The second IEP was dated November 8, 2017 and included one goal to improve organizational skills and attention by recording daily tasks and assignments with no more than one prompt. Both IEPs required that *"Parents will receive progress reports at the same time intervals and in the same manner as general education. For this student this will be through written reports and/or parent conferences."*

Documentation and interviews with USD #___ school staff found that general education students receive quarterly progress reports. School staff indicated that student grades are available to parents online at any time.

Based on the 2016-17 school calendar, quarters ended on March 10 and May 17, 2017. USD #___ provided copies of IEP Progress Reports for the two goals dated March 10, 2017 and May 17, 2017 written by Ms. Kidwell for the student's eighth grade school year.

Based on the 2017-18 school calendar, quarters ended on October 10 and December 15, 2017, and March 8, 2018.

The November 18, 2016 IEP was in place during the first reporting period An email from Ms. LJ to Ms. KM dated October 9, 2017 stated ". . . *do you know where the work habits rubric and the problem solving strategy steps they used for the student's baselines are in the IEP? I guess the goals didn't necessarily look like we had to continue using those testing measures. So maybe it doesn't matter?"*

USD #___ provided a copy of an IEP Progress Report showing two reporting periods for the November 18, 2016 IEP. The first reporting period does not have a date but shows the student is making progress toward the first goal from the November 18, 2016 IEP. School staff indicated this reporting reflected progress through October 10 and the date was inadvertently not included on the report form. School staff also indicated that grade reporting was provided to general education students during the October parent teacher conferences which the parent attended. It is noted that progress towards the second IEP goal is not included in the documentation for either October or December.

The second report is dated November 8, 2017 and shows the student is not making adequate progress towards the first goal. The second report indicates *"Work habit rubric was not included in the IEP. Based on classroom observations and teacher reports, the student does not use organizational tools and does not follow directions within 3 prompts. The student spends more time on his computer than completing work."*

No documentation was provided in regards to the December 15, 2017 or the March 8, 2018 reporting periods.

In this case, USD #___ was to provide IEP goal progress reports at the same time intervals and in the same manner as general education through written reports and/or parent conferences. General education students received quarterly reports and these were provided during the third and fourth quarters of eighth grade. While USD #___ may have provided IEP goal progress reports for the first goal on the November 18, 2016 IEP during first quarter of ninth grade, there is no documentation to show that the IEP goal progress reports were provided for the second goal of the November 18, 2016 IEP during first quarter. In addition, there is no documentation to show that IEP goal progress reports were provided on the only goal on of the November 8, 2017 IEP to the parent during the second and third quarter reporting periods. Based on the foregoing, the allegation of a violation of special education laws and regulations related to reporting IEP goal progress is substantiated.

ISSUE THREE: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written by not providing the required accommodations/modifications during the 2017-18 school year, specifically those related to the provision of copies of notes and worksheets, the Chromebook, and use of a planner.

Findings:

The father believes the student's IEP was not implemented as written for the accommodations/modifications related to copies of notes and worksheets, the use of the Chromebook, and the use of a planner. He believes the planner should be checked and signed by each classroom teacher and/or the paraprofessional in the classroom at the end of each class period. He also believes the student should not be using the Chromebook on a regular basis in the classroom due to his distractibility and inability to focus; instead, the father believes paper copies of notes and worksheets should be provided and completed by the student. The father reported he has had multiple conversations about his concerns with school staff via email and in person. However, the accommodations/modifications are still not being provided consistently as required by the IEP.

Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP. Federal regulations, at 34 C.F.R. 300.320(a)(4), requires the IEP to include a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

The findings of Issue Two are incorporated herein by reference.

The November 18, 2016 IEP only included one accommodation and modification related to the parent concerns as follows:

- Student will be given an alternate planner to use to keep track of assignments

The November 8, 2017 IEP included two accommodations and modifications related to the parent concerns as follows:

- Student will be given an alternate planner to use to keep track of assignments
- Student will be provided with copies of online notes and worksheets that do not directly test computer skills or require computer program to complete

It is noted that this IEP shows an initiation date of November 8, 2017.

It is noted that use of the Chromebook is not discussed in either IEP.

Staff from USD #___ reported that a digital planner is provided to all students via the Chromebook and Google Calendar. Interviews and documentation shows that multiple versions of alternate planners, both hard copies and computer-based, have been tried with the student during the 2017-18 school year. However, interviews, documentation and emails between staff and the father reflect that the student often refused to complete any of the planners even when given prompts. It is noted there is no requirement in the IEP that the planner be checked or signed by school staff even though several of the planners included places for teacher signatures and several emails described procedures where the teacher or paraprofessional would check the planner on a regular basis.

The father reported the student was not provided with copies of online notes or worksheets but the student could make his own copies of the online notes and worksheets in the library if he wanted them. The father believes the teachers were responsible for providing these copies and not the student.

School staff reported online notes and worksheets were always available to the student in Google Classroom on the internet. USD #___ did provide several anecdotal notes beginning in January 2018 showing that the student worked on written assignments in class rather than working on the Chromebook. In addition, USD #___ provided written documentation showing that some assignments did require specific computer programs to complete e.g. the Khan Academy program used in the algebra class. In an email dated January 12, 2018 from Ms. LJ to the student's general education teachers, she wrote *"Teachers are responsible for prompting the student to print the assignment, if the student refuses to print work off you can either note in his planner that he chose to complete work on the computer, or if he refuses to print or to complete the assignment in the given time*

Heather [Ms. Gardner, the case manager at the time of the email] will communicate with dad."

In this case, it appears that USD #___ did provide the required accommodation and modification for providing the student with an alternate planner. However, it is unclear if the accommodation and modification to provide the student with copies of online notes and worksheets that do not directly test computer skills or require computer programs to complete were provided consistently beginning on November 8, 2017 during the 2017-18 school year. While documentation shows the student did work on hard copies of assignments, the documentation indicates that the teachers only prompted the student to print these worksheets and that the student was not provided with these copies.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to implementing the IEP as written in regards to accommodations and modifications is substantiated.

ISSUE FOUR: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to ensure each general education staff was aware of their responsibilities for implementing the student's IEP during the 2017-18 school year.

Findings:

The father believes that the general education teachers at ____ High School were not informed of their responsibilities for implementing the student's IEP during the 2017-18 school year. He reports several general education teachers indicated to him that they were unaware that the student was supposed to be using a planner to keep track of his assignments.

Federal regulations, at 34 C.F.R. 300.323(a), require each public agency to have an IEP in effect at the beginning of the school year for each child with a disability within its jurisdiction who has been determined eligible to receive special education and related services under IDEA, Part B. Federal regulations at 34 C.F.R. 300.323(d), require each public agency to ensure the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and to ensure each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP; and, of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

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

USD #___ school staff reported that all school staff are provided access to a document titled “Confidential IEP Information” in the student information system. The student’s teachers reported that they had reviewed this document and were aware of the accommodations and modifications that were to be provided in the classroom. USD #___ provided a copy of this document which showed a listing of the accommodations and modifications required by the student’s IEP developed on November 8, 2017.

The father reported that he first contacted Ms. KM on September 11, 2017 when the student was starting to get behind on assignments and asked that she check on the student. When the missing assignments continued to increase in number, the father requested a meeting which was held on October 4, 2017. At that meeting, the father reported he was “*told a new special education teacher (Ms.LJ) had been hired and she would be the student’s new case manager. It would be a much smaller group (current class is over 20 students) and she would be able to help.”*

The first email correspondence provided related to the student’s IEP was dated October 5, 2017 from Ms.LJ. USD #___ did not provide any documentation to demonstrate that the general education teachers were made aware of their responsibilities for implementing the IEP dated November 18, 2016 at the beginning of the 2017-18 school year.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to ensuring that child’s IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and to ensure each teacher and provider are informed of his or her specific responsibilities related to implementing the child’s IEP; and, of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP is substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in the following areas:

1. Federal regulations, at 34 C.F.R. 300.320(a)(3)(ii), require public agencies to provide a report on the progress the child is making toward meeting the annual goals such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.

In this case, documentation and interviews found both IEPs in effect during the past twelve months required IEP goal progress reporting to be through written reports and/or parent conferences for this student. USD #___ was to provide the IEP goal progress reports at the same time intervals and in the same manner as general education. General education students received quarterly reports and these were provided during the third and fourth quarters of eighth grade. While USD #___ may have provided IEP goal progress reports in writing and/or at the October parent teacher conference during first quarter of ninth grade, there is no documentation to show that the IEP goal progress reports were provided for the second IEP goal on the November 18, 2016 IEP during first quarter or that IEP goal progress reports were provided for the only IEP goal on the November 8, 2017 IEP during the second and third quarter reporting periods of ninth grade.

2. Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP. Federal regulations, at 34 C.F.R. 300.320(a)(4), requires the IEP to include a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

In this case, the IEP dated November 18, 2017 required the accommodation and modification for the student to be provided with copies of online notes and worksheets that do not directly test computer skills or require computer programs to complete. While there is some documentation to show this accommodation was provided beginning in January 2018, there is no documentation to show this accommodation was provided beginning on the initiation date of November 8, 2017 as required by the most recent IEP. In addition, the interviews with the school staff and parent were in direct conflict regarding how the student was provided the copies of the online notes and worksheets.

3. Federal regulations at 34 C.F.R. 300.323(d), require each public agency to ensure the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and to ensure each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP; and, of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, USD #___ provided no documentation to show that the student's general education teachers were informed of their specific responsibilities related to implementing the student's IEP or of the specific accommodations, modifications, and support that must be provided for the student in accordance with the IEP dated November 18, 2016. However, documentation and interviews do show the general education staff were made aware of their responsibilities and of the specific accommodations, modifications, and support that must be provided for the student in accordance with the IEP dated November 8, 2017 through the student information system.

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:

    a) Comply with 34 C.F.R. 300.320(a)(3)(ii), by providing a report on the progress the child is making toward meeting the annual goals such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.

    b) Comply with 34 C.F.R. 300.101, 34 C.F.R. 300.17, and 34 C.F.R. 300.320(a)(4) by implementing the IEP as written, specifically the accommodations and modifications required to be provided to each child with a disability as required by the IEP.

    c) Comply with 34 C.F.R. 300.323(d) by ensuring each child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and to ensure each teacher and provider are informed of his or her specific responsibilities related to

implementing the child's IEP; and, of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

2. No later than June 1, 2018, USD #___ shall review their procedures for informing general education teachers of their responsibilities for implementing the IEP and monitoring the provision of accommodations and modifications in conformity with the IEP. USD #___ shall develop a written procedure and a train appropriate staff to implement this procedure prior to the beginning of the 2018-19 school year. A copy of this written procedure will be provided to Early Childhood, Special Education and Title Services. In addition, USD #___ will document who provided the training and the content of the training and send that documentation to Early Childhood, Special Education and Title Services.

3. Within 20 calendar days of accepting the findings of this report, the IEP team for the student will meet to determine if FAPE was provided to the student in light of these findings of noncompliance and if any compensatory services are owed to the student. The parent will be provided prior written notice describing the determination. If compensatory services are deemed necessary, the parent shall have the option of accepting all, part of, or none of the services proposed in the plan for compensatory services. A copy of the Prior Written Notice and, if necessary, a plan for providing any compensatory services will be provided to Early Childhood, Special Education and Title Services, along with a statement of the portion of the plan, if any, accepted by the parent.

4. Further, USD #500 within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools: 18FC___-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on March 6, 2018, by _____ on behalf of his son, _____. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, an Initial Report, addressing the allegations, was issued on April 5, 2018. That report concluded that there were violations of special education statues and regulations

Thereafter, on April 15, 2018, the school district filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the report, the school district's notice of appeal, the parent's written response, and information contained in the complaint file at the Kansas State Department of Education (KSDE). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

PRELIMINARY MATTERS

The Appeal Committee will limit its inquiry to the issues presented in the appeal. No new issues will be decided by the Appeal Committee. The appeal process is a review of the Initial Report. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Initial Report.

DISCUSSION OF ISSUES ON APPEAL

ISSUE 2: The school district failed to provide progress reports on a quarterly basis.

The investigator concluded that there was a failure to provide progress reports on a quarterly basis, as required by the student's IEP because the school district failed to document progress reports for the second goal in the November 18, 2016 IEP during the first quarter reporting period, and failed to document progress reports for the single goal in the November 8, 2017 IEP during the second and third quarter reporting periods. [See p. 6 of Initial Report].

As part of its appeal of this decision, the school district submitted documentation that these progress reports were completed. However, documentation of the existence of the reports does not, by itself, document that these reports were given to the parents. The student's IEP states that

"Parents will receive progress reports at the same time intervals and in the same manner as general education. For this student, this will be through written reports and/or parent conferences."

In a situation like this one, where a parent alleges that he did not receive a progress report, and a complaint investigator has made a finding that progress reports were not delivered to the parent, evidence only of the existence of a progress report is insufficient to overturn the investigator's findings. In an appeal, such as this one, the Appeal Committee would expect the district to produce substantial evidence of delivery of the progress reports, such as signed statements from school personnel that they mailed or personally delivered the reports, and providing a date of such delivery. For this reason, the Appeal Committee recommends that the school district adopt a procedure whereby school personnel produce contemporaneous documentation of delivery of progress reports at the time they are delivered to the parent. This could be in the form of a statement on the form itself, certifying who made the delivery, the method of delivery, and the date of the delivery, with a signature line for the person certifying delivery.

The decision of the investigator substantiating a violation of law on this issue is sustained.

ISSUE 3: The school district failed to implement the student's IEP, as written, by not providing copies of notes and worksheets, the Chromebook, and the use of a Planner.

At the outset, it should be noted that the investigator did not find a violation with regard to use of the Chromebook because us of a Chromebook was not specified in the IEP. Further, the investigator did not make any finding of a violation with regard to the use of an alternate planner [See page 8 of the Initial Report]. Thus, the issue on appeal is whether the school district failed to provide the student with copies of notes and worksheets.

This issue involves the interpretation of the language in the IEP regarding notes and worksheets. The finding by the investigator of a violation was related solely to the provision in the student's IEP, which stated [the student] "will be provided with copies of online notes and worksheets that do not directly test computer skills or require computer programs to complete (emphasis added)." See IEP dated November 8, 2017, under the title: "Social/Emotional Accommodations & Modifications," and the Initial Report on p. 8-9.

The investigator found a violation because school personnel were not "providing" the student with online notes and worksheets, as specified in the IEP, but instead, were requiring the student to make his own copies of the online notes and worksheets in the library if he wanted them [See Initial Report, p. 8]. In its appeal, the school district makes the case that it attempted to clarify this portion of the IEP to the parent on multiple occasions, stating that teachers did not want to "enable" the student by doing everything for him, and that doing so was not the intent when the accommodation was written into the IEP.

The Appeal Committee notes that the investigator's finding of noncompliance was based on the actual language in the IEP. This is the proper analysis to use in interpreting an IEP. In Sytsema v. Academy Sch. Dist. No. 20, 538 F.3d 1306, 50 IDELR 213 (10th Cir. 2008), the United States Circuit Court of Appeals said that when interpreting the content of an IEP, the court will limit its

consideration to only the words used in the written IEP, and will not consider extraneous evidence. The Committee notes that Kansas is in the 10th Circuit, and the legal standards set by the 10th Circuit are law in Kansas.

Therefore, the Appeal Committee will also base its decision on the words used in the IEP, and will not consider what the school district now alleges that the team intended when it drafted the IEP. If the IEP does not state what the IEP team intended, the IEP team should meet again and attempt to modify the IEP so that it does clearly convey the intent of the IEP team. Moreover, because it is the IEP team's duty to draft an IEP that is clear to all involved, any ambiguity in the language used in the IEP will be construed against the writer of the IEP (which is always the IEP team - or school district).

As indicated previously, the student's IEP states that "The student will be provided with copies of online notes and worksheets that do not directly test computer skills or require computer program to complete." The investigator concluded that this IEP provision was not implemented because "teachers only prompted the student to print these worksheets and that the student was not provided with these copies." The Appeal Committee agrees with this analysis. While the meaning of the word "provided" could be interpreted differently by reasonable minds, the Appeal Committee agrees with the investigator that the more reasonable interpretation is that the student is to be given copies of these notes and worksheets, and not just an opportunity to retrieve them. The Appeal Committee believes the term "provided" is a fairly unambiguous term, but even acknowledging some ambiguity in that term, the Appeal Committee agrees with the investigator that this provision in the IEP reasonably required school personnel to give copies of notes and worksheets to the student.

The investigator's decision is sustained on this issue.

ISSUE 4: The school failed to ensure each general education staff member was aware of their individual responsibilities for implementing the student's IEP during the 2017-2018 school year.

The investigator substantiated this allegation with regard to the November 18, 2016 IEP, stating that the school district did not provide any documentation to demonstrate that that general education teachers were made aware of their responsibilities for implementation of the IEP at the beginning of the 2017-1-2018 school-year (See p. 10 of Report). As for the November 8, 2017 IEP, the investigator cited documentation that school staff members did have access to a document titled "Confidential IEP Information," and that those staff members reported that they had reviewed that document and were aware of the accommodations that were to be provided to the student (See p. 10 of Report).

In its appeal, the district stated that the Confidential IEP Information document sent to the investigator did not address the November 18, 2016 IEP because when this complaint was filed, the Skyward Student Information System was updated to delete old information and to insert information relating to the current November 18, 2017 IEP. The school district provided, in Exhibit E of its Appeal, a copy of the "Confidential IEP Information" relating to the November

18, 2016 IEP (The school district explained that this copy was taken from teachers who still had copies of this document in notebooks they keep on their students).

While Exhibit E documents that there was a Confidential IEP Information document in existence for the November 18, 2016 IEP, it does not document that it was provided to all school district staff who had IEP responsibilities for this student. This is the district's appeal. The School District could have produced teacher statements verifying that all of the student's teachers who had IEP responsibilities had access to this document, had reviewed the document, and were aware of the accommodations and modifications that were to be provided in their classrooms, in the same manner as was presented to the investigator with regard to the November 8, 2017 IEP. Without such documentation, the Appeal Committee has insufficient information to overturn the investigator's decision on this issue. Therefore, the investigator's decision is sustained on this issue.

CONCLUSION

All findings and conclusions in the original report are sustained.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SERVICES

REPORT OF COMPLAINT
FILED AGAINST
_____ PUBLIC SCHOOLS #___
ON MARCH 22, 2018

DATE OF REPORT APRIL 24, 2018

This report is in response to a complaint filed with our office on behalf of _____ by her parents, _____ and _____. _____ will be referred to as "the student" in the remainder of this report. Mr. _____ and Dr. _____ will be referred to as "the parents."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with S, Assistant Director of Special Education for USD #___, on April 5 and 18, 2018. The investigator spoke by telephone with the student's father on April 13, 2018. The investigator spoke by telephone with the student's mother on April 19, 2018.

In completing this investigation, the complaint investigator reviewed the following material:

- Stormont Vail Psychological Evaluation report dated May 16, 2017
- Prior Written Notice for Evaluation or Reevaluation dated May 24, 2017
- Email dated August 7, 2017 from the student's father to the principal
- Email dated August 10, 2017 from the student's father
- Emails dated August 14, 2017 between the student's father and the School Psychologist
- Emails dated August 25, 2017 between the student's father and the School Psychologist
- Prior Written Notice for Evaluation or Reevaluation amended August 25, 2017
- Emails dated August 28, 2017 between the School Psychologist and the student's father
- Email dated August 31, 2017 from the student's father to the School Psychologist
- Letter dated August 29, 2017 regarding a vision evaluation
- Email dated September 5, 2017 from the School Psychologist to the student's father
- Email dated September 5, 2017 from the student's father to the School Psychologist
- Email dated September 7, 2017 from the School Psychologist to the student's father
- Prior Written Notice for Evaluation or Reevaluation amended October 9, 2017

- Email dated September 10, 2017 from the student's father to the School Psychologist
- Email dated September 21, 2017 from the student's father to the School Psychologist
- Email dated September 22, 2017 from the School Psychologist to the student's father
- Email dated September 28, 2017 from the student's father to the School Psychologist
- Email dated September 29,2017 from the student's father to the School Psychologist
- Prior Written Notice for Evaluation or Reevaluation amended October 10, 2017
- Prior Written Notice for Evaluation or Reevaluation amended October 17, 2017
- Email dated October 19, 2017 from the student's father to the School Psychologist
- Second email dated October 19, 2017 from the student's father to the School Psychologist
- Email dated October 23, 2017 from the School Psychologist to the student's father
- Emails dated October 23, 2017 from the student's father to the School Psychologist
- Email dated October 23, 2017 from the student's father to the principal
- Email dated October 24, 2017 from the principal to the student's father
- Email dated October 24, 2017 from the Assistant Director to staff
- Emails dated October 26, 2017 from the student's father to the principal
- Email dated November 2, 2017 from the School Psychologist to the student's father
- Prior Written Notice for Evaluation or Reevaluation amended November 2, 2017
- Prior Written Notice for Evaluation or Reevaluation dated November 2, 2017
- Evaluation Report dated November 13, 2017 (subsequently amended and sent to parents on December 21, 2017)
- Draft IEP for the student dated November 13, 2017
- IEP Meeting Notes from November 13, 2017 meeting
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 13, 2017
- Emails dated November 17, 2017 from the student's father to the School Psychologist
- Email dated November 19, 2017 from the student's father to the School Psychologist
- Email dated November 21, 2017 from the Assistant Director to the parents
- Letter from the Assistant Director of Special Education to the parents dated November 21, 2017
- Emails dated November 21, 2017 from the School Psychologist to the student's father

- Email dated November 21, 2017 from the student's father to the Assistant Director
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 28, 2017
- Emails dated November 30,2017 from the student's father to the School Psychologist
- Email dated December 4, 2017 from the School Psychologist to the student's father
- Emails dated December 4, 2017 from the student's father to the School Psychologist
- Email dated December 6, 2017 from the Assistant Director to the student's father
- Email dated December 6, 2017 from the student's father to the Assistant Director
- Email dated December 12, 2017 from the Assistant Director to the student's father
- Email exchange dated December 12, 2017 between the student's father and the School Psychologist
- Email exchange dated December 12, 2017 between the Assistant Director and the student's father
- Email dated December 12, 2017 from the student's father to the School Psychologist
- Email dated December 14, 2017 from the student's father to the School Psychologist
- Email dated December 14, 2017 from the Assistant Director to the student's father
- Email dated December 14, 2017 from the student's father to the Assistant Director
- Children's Mercy Psychological Evaluation report dated December 19, 2017
- Email dated December 20, 2017 from the School Psychologist to the student's father
- Email dated December 20, 2017 from the student's father to the School Psychologist
- Email dated December 21, 2017 from the Assistant Director to the student's father
- Email dated December 21, 2017 from the student's father to the Assistant Director
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated December 21, 2017
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated December 21, 2017
- Email dated January 9, 2018 from the Assistant Director to the student's father

- Email exchange dated January 11, 2018 between the Assistant Director and the student's father
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated January 11, 2018
- Agenda dated January 16, 2018 (the agenda used for the March 6, 2018 team meeting)
- Email dated January 24, 2018 from the student's father to the School Psychologist
- Email dated January 29, 2018 from the School Psychologist to the student's father
- Email dated February 1, 2018 from the student's father to the School Psychologist
- Notice of Meeting dated February 14, 2018
- Email dated February 19, 2018 from the student's father to the School Psychologist
- Notice of Meeting dated February 27, 2018
- Email exchanges between the School Psychologist and the student's father dated March 6, 2018
- Notes from March 6, 2017 team meeting
- Email dated March 12, 2018 from the student's father to the School Psychologist
- Notice of Meeting dated March 14, 2018 from the School Psychologist to the Assistant Director
- Emails dated April 18, 2018 from the student's father to the School Psychologist
- Revised draft of the November 11, 2017 IEP for the student
- Email dated April 13, 2018 from the student's father to the investigator
- Email dated April 18, 2018 from the student's father to the investigator
- PowerPoint presentation created by the student's father and presented at the April 18, 2018 team meeting
- Agenda for April 18, 2018 team meeting
- Notes from April 18, 2018 team meeting

Background Information

This investigation involves an 8-year-old girl. During the 2015-16 school year, the student was enrolled in Kindergarten in her neighborhood public school and attended through December 18, 2015 before her parents withdrew her and transferred her to a local private school, Prairie Moon Waldorf. The pedagogy of Waldorf schools emphasizes the role of imagination in learning and, according to the Association of Waldorf Schools of North America, "strives to integrate holistically the intellectual, practical, and artistic development of pupils." Students are introduced to the alphabet at the first-grade level. Formal instruction in reading, writing, and other academic disciplines are typically not introduced until students are around 7 years of age.

The student's father told the investigator that while at Prairie Moon Waldorf the student was exposed to letter formations but did not receive any actual reading instruction.

The student was transferred to her current private school, Century School, at the start of the 2017-18 school year. The student is currently placed in an un-graded classroom. According to the student's father, the student is making good academic progress in this setting. He notes that the student has made significant gains with regard to her reading skills since entering Century School.

The student was adopted at birth. She has been diagnosed as having a seizure disorder although she has been seizure free for over two and a half years and is off all seizure medications. The student has also been diagnosed with ADHD, and a generalized anxiety disorder as well as a separation anxiety disorder. The student also has a history of problems related to eating and sleeping. The student has been seen for evaluation as follows:

- Children's Mercy Hospital for assessment in the gastroenterology clinic;
- First Med in Lawrence for an Occupational Therapy evaluation and assessment related to ADHD;
- Vision assessment by an Optometry Specialist;
- Children's Mercy Hospital Speech Clinic;
- Otolaryngology assessment;
- Comprehensive Psychological Evaluation at Stormont Vail Hospital;
- Psychological evaluation at Children's Mercy Hospital.

In their complaint, the parents note that the student's father has worked as a special education teacher in Hawaii and in the continental United States. The student's mother is a psychiatrist.

The student's father told the investigator during the telephone conversation of April 13, 2018 that he and his wife were primarily interested in securing individual and family therapy for their daughter through the evaluation process rather than academic services since the student is finding success in her current private school placement. He also indicated that the parents' primary goal when filing this complaint was to help the district understand that staff should not rush to predetermine services for the student. According to the student's father, neither her nor his wife feel that their input has been sought out, recognized, or valued during the evaluation and IEP development processes.

Timeline

The parents requested that the district conduct an initial special education evaluation of the student in May of 2017. At the time of their request for evaluation, the parents informed the district that the student was being treated for

anxiety, ADHD, aggression, depression, and possible autism. Informed written consent for the evaluation was obtained by the district on May 25, 2017.

On August 7, 2017, the parents requested that the evaluation consent form be amended to include screening for Autism. On August 10, 2017, the student's father again contacted the district to ask that the evaluation include screening for Autism. The School Psychologist for the district followed up with the parent on August 14, 2017 to tell him that a new evaluation consent form would not be required since the evaluation as proposed already would include all areas of suspected disability, and the district Autism/behavior consultant would be involved in the evaluation.

The father responded to the School Psychologist on August 14, 2017, stating that the Kansas State Department of Education indicated that the district must provide the parents with prior written notice explaining why the district would not screen the student for Autism. The parents then sent another request to the district on August 14, 2017 requesting that the student be screened and evaluated for Autism. The request stated that the district's response should include prior written notice.

On August 25, 2017, the School Psychologist sent to the parent via U.S. mail a prior written notice form for evaluation which specified that the district's assessment would include screening for Autism. The School Psychologist also sent the parents a prior written notice form via email. The father responded to the School Psychologist on August 25th stating that the district is out compliance because he had not received the prior written notice form within 10 days of his request.

After district follow-up with the parents on August 28, 2017, the student's father acknowledged that he had received the prior written notice form.

On August 31, 2017, the parents shared a report from an outside agency regarding the student's vision. The parents asked the district if the team should move immediately to establish eligibility for the student under the category of Other Health Impaired based upon the outside evaluation and then reconvene after other outside evaluations and the district evaluation were completed. The parents also inquired as to how the student's visual deficits would impact testing, particularly with regard to academic assessment.

The School Psychologist responded on September 5, 2017 telling the parents that the vision report had been shared with the team and would be considered as a part of the initial evaluation. The School Psychologist told the parents that once the evaluation was completed, the team would meet to determine whether the student was determined eligible for special education services and would determine the appropriate categorical designation. The psychologist also told the

parents that the student's vision could indeed have an impact on her academic performance.

On September 5, 2017, the student's father made a formal request that an eligibility meeting be held at the district's earliest convenience. The father stated that the parents had provided significant and sufficient information in the form of outside evaluations that demonstrated both a physical disability and mental impairment and asserted that any academic testing would be invalidated by the student's vision impairment and reading processing disability. He requested that the district provide a response in the form of a prior written notice form.

The School Psychologist contacted the student's father on September 7, 2017 to seek clarification regarding his request for prior written notice. She asked the parent whether he was 1) "asking that (the district) continue to collect new/additional data for the evaluation, but NOT in the area of reading, scheduling an eligibility meeting as soon as possible once (the district has completed) the evaluation, or 2) withdrawing/revoking consent for the evaluation to progress but to make an eligibility decision as soon as possible with the information (the district currently had which the parent had provided)?"

On September 10, 2017, the parent sent an email to the School Psychologist indicating he was withdrawing his request for an eligibility meeting and indicating the district should continue with the evaluation.

On September 21, 2017, the student's father sent an email to the district requesting that the district use one of the five specific assessments he had specified as a part of the evaluation to determine the student's needs with regard to Autism.

The School Psychologist responded to the parent on September 22nd acknowledging receipt of the request and indicating that the team would consider the request and provide a response through prior written notice within 15 school days.

On September 28, 2017, the student's father sent a request asking that the district's Occupational Therapist (OT) evaluate the student for "lateral transference of information issues (copying from one text to another especially from board to paper), cross body coordination, eating issues, and hand eye coordination issues, to also evaluate (the student's) Sensory Processing disorder using one or more evidence based criteria norm reference OT assessment tools: sensory integration and Praxis Test (1995) or a School Companion Tool (2006)." The parent also stated that he had asked the OT about preferred and non-preferred food items to look at sensory eating issues and had not heard back from the OT.

On September 29, 2017, the parent requested that the district conduct a comprehensive feeding and swallowing evaluation to determine the extent to which difficulties stem from food preferences, behavioral issues, or medical, physical or cognitive problems (anatomic, neurophysiologic, sensorimotor and medications); the student's nutritional status and needs, food deliver system (oral or non-oral), including any food service preparation equipment or assistive technology required to meet the student's nutritional needs safely; feeding schedule; quantity and texture of food to be offered at meals and snacks, and components of the emergency plan. (The district had already received a copy of a June 2017 evaluation completed at Children's Mercy Hospital by the Gastroenterology Clinic and Feeding Clinic.)

The district sent the student's father a prior written notice form on October 9, 2017 agreeing to use one of the 5 Autism assessment measures he requested in his September 21, 2017 email.

On October 10, 2017, the district sent the student's father a prior written notice form in response to his September 28th request regarding OT assessment. The district agreed to assess the student in all areas requested by the parent with the exception of the eating assessment, stating that no current educational concerns were evident in this area.

In the October 10th prior written notice form, the district noted that it agreed to use a tool requested by the parent to assess the student with regard to a Sensory Processing disorder. (This prior written notice was subsequently amended on November 2, 2017 to clarify that the district would agree to use ***one*** of the tools specified by the parent.)

On October 17, 2017, the district sent the parents a separate prior written notice of refusal to conduct the feeding and swallowing evaluation requested by the student's father on October 29th.

The student's father emailed the School Psychologist on October 19, 2017 stating he had received the prior written notice denying the "eating evaluation" and the prior written notice denying the "food evaluation." The parent asked for clarification about what would be occurring and asked if the district was going to address these issues. The parent wrote that he had learned from the private school that the OT had been to the school to observe the student during lunch. The father stated that he believed based on his conversations with the OT and the Speech/Language Pathologist (SLP) that the district "was going to do an evaluation or help address the food aversion, since the Speech Pathologist at this time didn't seen (sic) an oral motor issue (chewing and swallowing)."

The School Psychologist emailed the student's father on October 23, 2017 apologizing for any confusion. She noted, "In giving thoughtful consideration to your requests, various team members did seek additional information such as

interviews with (the student's) teacher and observations. Based off of the information gathered, the team did not see an educational concern in the area of eating issues. Therefore, the PWNs (prior written notices) I sent out to you are correct."

On October 23, 2017, the student's father sent an email to the School Psychologist stating his disagreement with the district's refusals. He stated that he had returned the prior written notice form to the school since he considered it to be incomplete. He also noted that he hoped the team would reconsider his request, and he provided additional information in support of his request.

The student's father also sent an email to the principal of the neighborhood school (the building tasked with conducting the evaluation of the student) on October 23rd asking the district to reconsider his request when resending a completed prior written notice. In his email, the parent provided information as to why he believed the eating assessment was needed.

On October 24, 2017, the Assistant Director of Special Education sent an email to all members of the evaluation team asking them to read all the information pertaining to the parent's request – both the new information provided by the parent and the information previously available – and requested a meeting with the team to consider the parent's request. The building principal emailed the Assistant Director stating that the team was reviewing the information and would contact the parent within a week.

On October 30, 2017, the School Psychologist received four letters previously sent by the student's father to the building principal. Three of the letters (dated October 19 and October 26, 2017) indicated that the parent was returning three prior written notice forms responding to his requests because they were incomplete and contained sections (B, C, D, and E) that were blank. The fourth letter indicated he had not yet received a prior written notice form in response to his previous request regarding specific sensory assessment tools.

The School Psychologist responded to the student's father on November 2, 2017 indicating that the three prior written notice forms were complete as sent to him. She also provided the parent with another copy of each of the prior written notice forms, highlighting those areas he had identified as being blank. The psychologist also noted in her email that while the prior written notice of October 17, 2017 did address the father's request regarding the use of a specific sensory tool, she was including an amended prior written notice form which contained a specific statement that the district agreed to the parent's request for the administration of a specific assessment tool.

On November 2nd, the psychologist also included a new prior written notice form addressing the father's requests for feeding/eating evaluations. In the new form,

the district agreed to conduct a feeding/eating evaluation but clarified its refusal to conduct a swallowing evaluation.

An initial Evaluation and IEP Team meeting was held on November 13, 2017. Both parents attended the meeting and the team reviewed the draft evaluation report. The team reviewed eligibility criteria related to the categories of Autism and Other Health Impaired. It was determined that the student did not meet the categorical definition of a student with Autism but did meet criteria for identification under the category of Other Health Impaired.

A draft IEP was proposed by the district. The draft was reviewed and discussed, and the district provided the parents with prior written notice for the initial provision of services. The parents requested that counselling services be added to the student's IEP. The team discussed the parents' request. The need for counselling services was not determined. The district told the parents that they would be provided with prior written notice of refusal to provide counselling services.

On November 15, 2017, the student's father sent an email which included questions about the proposed IEP. The parent raised concerns regarding the "Educational Medical Issues" section of the IEP (noting that the section was blank on the draft) and noted that the general education teacher had left the meeting prior to the discussion of that section. The parent also stated that he was requesting "Family and Individual Therapy." The email contained support for his request.

The student's father sent another email on November 16, 2017 referencing his November 15th email and asking why no behavioral goal had been developed. The parent cautioned the district team against making "false equivalence between (the student's current private school) learning environment and that of a general education environment. (The student's) LRE currently is not a general education class room and her teacher does not report and (the student) report daily issues resulting from ridged (sic) thinking and inflexibility and obvious lack of social skills to be friends who are of a same age peer."

A November 17, 2017 email from the student's father outlined three issues with the eligibility process: 1) Criteria was read but there was no discussion; 2) A statement was read that the team was in agreement that the student did not meet criteria for Autism, but parents were not given a chance to give their opinion; and 3) the parent disagreed with the results of the CARS-2 assessment as reported and believed there was evidence of Autism. The parent requested a meeting with the school to resolve the issues; if the school declined the request, the parents would ask for an independent evaluation.

The student's father then sent the district 7 suggested goals/objectives in a second email on November 17, 2017. The parent also included an explanation of the difference between "reading fluency" and "automaticity."

On November 19, 2017, the student's father sent an email detailing identified needs related to present levels of performance and a list of 17 additional goals/objectives for the team to consider.

Another email from the student's father followed on November 19th outlining student strengths and parent concerns.

The student's father sent another email on November 19, 2017, this one requesting a meeting to discuss the eating evaluation and the three issues the parents had with that evaluation:

> 1) The evaluation consisted of an observation rather than a norm-referenced, standardized test, and the parents considered the results to be an "opinion;"
>
> 2) No one worked directly with the student to perform a sensory diet evaluation to look at oral sensory issues or gather information regarding daily caloric intake and nutritional needs; and
>
> 3) The observation countered the results of a previous evaluation at Children's Mercy Hospital as well as observations of the parents and classroom teacher. According to the parent, Children's Mercy had recommended direct OT services but the district failed to take action on that request.

The parent stated that if the school chose not to meet, he would request an independent evaluation.

On November 21, 2017, the School Psychologist sent an email to the student's father acknowledging receipt of his emails and stating that the district would follow up with him the week of November 27th (after Thanksgiving Break) to schedule a meeting to discuss the parents' concerns.

The Assistant Director also sent a letter to the parents on November 21st following up on a request from the parents for confirmation that special education services would be provided to the student at her neighborhood elementary school. The Assistant Director stated that the district stood ready, willing, and able to provide a free appropriate public education (FAPE) to the student.

The student's father acknowledged receipt of the Assistant Director's letter in an email on November 21st, stating that the letter would be forwarded to their advocate for review.

On November 28, 2017, the district provided the parents with prior written notice of the district's refusal to provide counselling services and Individual Family Therapy. The form also referenced other requests made by the parent with regard to the evaluation and IEP and noted that the evaluation and IEP teams would be reconvening to address those issues.

The student's father sent an email on November 30, 2017 stating that the parents felt they were being left out of the eligibility and IEP process. The parent stated that he disagreed with the decisions made at the November 13, 2017 meeting and with the contents of the prior written notice sent to him on November 28th. The parent provided his rationale for why counselling/social work services should be provided.

The student's father sent another email to the district on November 30th. In this email, he requested a mental health evaluation for the student to determine whether counselling/therapy services were needed.

On December 4, 2017, the School Psychologist sent an email to the parent acknowledging receipt of his request and proposing a meeting for December 19, 2017 to discuss the parents' concerns.

Also on December 4th, the School Psychologist acknowledged receipt of the parent's email regarding disagreement with the November 28th prior written notice. The psychologist noted that the parents had initially made the request for counselling and social work services at the IEP Team meeting on November 13th and that the team had discussed and considered that request at the meeting, ultimately determining that those services were not needed. The psychologist also pointed out that the parent was a part of the discussion and had expressed his opinions regarding the need for services at that time. The psychologist stated that a team meeting would be convened to discuss additional requests, including the request for individual and family therapy.

On December 4, 2017, the student's father indicated that he had previously requested an "evaluation of school based behavioral health services" and further explained his disagreement with the prior written notice. According to the parent the notice stated that the IEP team was in agreement, but as a member of the IEP Team, he did not agree.

The student's father stated that he would not be available for a meeting on December 19th. The parent stated that he wanted to "reopen eligibility and discuss different criteria with no pre-written statement or pre-determined worksheets. He indicated that if the school was unwilling to take this approach, the parents would move forward with a request for an independent educational evaluation or Due Process. The parent stated that he and his wife were "not pulling (the student) out of private school to enroll her in a public school while

FAPE is always an option and is always offered we would decline enrolling her in a public school for now. At this time Century School is meeting her academic/social emotional needs so we would be implementing an ISP."

On December 6, 2017, the Assistant Director emailed the student's father acknowledging the school team's ongoing careful consideration of the parents' requests and concerns. The Assistant Director offered to meet with the student's father and the building principal to review some of the special education in question and to discuss any concerns the parent might have. She also indicated that the advocate mentioned previously by the parent was welcome to attend the meeting.

The parent responded via email on December 6, 2017, declining a meeting with the Assistant Director, noting that he was very familiar with special education procedures. He went on to list his concerns:

1) The team did not review all eligibility indicators and sub-indicators, and the parents were not allowed any input, nor was the Kansas State Department of Education indicator document shown to the parents.
2) The team was not aware that the meeting should have been held to develop an ISP rather than an IEP. According to the parent, the team did not know what he was referring to when he mentioned an ISP.
3) The prior written notice form reflecting the district's refusal of a request made by the parent at the November 13, 2017 team meeting was written incorrectly because it indicated that the parents agreed with the school team's decision.
4) The district has not addressed the parents' concerns regarding where special education services for private school students are delivered. The parent disagreed with the decision-making process and policies in place in the district regarding this issue.
5) The student qualified for services but her needs have not been met. An ISP had not been implemented so a service gap was developing and compensatory services will be required.

The parent went on to state that if the school team did not meet to re-examine eligibility, he would request a private evaluation, and the district would be required to initiate Due Process should they object to that evaluation. The parent expressed willingness to meet to complete an ISP so that a plan to address the service gap could be developed and implemented.

On December 8, 2017, the district proposed a meeting date of December 13, 2017, and the parent agreed to meet.

On December 12, 2017, the school informed the student's father that the student's private school teacher would be unable to attend the meeting on December 13th. The district indicated that the teacher was willing to provide

written input, and that the teacher could be excused with his agreement or the meeting could be rescheduled.

The student's father responded on December 12, 2017 stating that he was "sorta okay" with proceeding without the teacher since he does not consider her to be the general education teacher but rather a representative of an outside agency. He stated that the general education teacher in attendance should come from the neighborhood public school and indicated that he did not consider the student's private school classroom to be the general education classroom.

Later on December 12, 2017, the student's father sent an email to the district stating that a general education teacher from the neighborhood elementary school must be present at the December 13th meeting and specified that the location of services could not be determined at the meeting without a representative from the private school, the parent, and the principal from the neighborhood elementary school.

When the Assistant Director notified the student's father via email that the December 13, 2017 meeting had been cancelled and could be rescheduled so that the student's private school teacher can be present and participate fully. The Assistant Director also clarified that the general education teacher of the student is a required participant and an IEP Team meeting and that the student's private school teacher met this requirement. The email stated that the district would consider identifying a potential classroom teacher for the student from the neighborhood elementary school to attend the meeting. The Assistant Director again offered to meet with the parent to discuss his questions or concerns and responded to some of the issues raised by the parent in his December 6th email. Specifically, she addressed the issue of an "ISP" mentioned by the parent. She also stated that the district had on November 13, 2017 proposed an IEP and provided the parents with prior written notice asking for written consent to implement the district's proposal for initial provision of special education services. The Assistant Director wrote that the district stood ready, willing and able to provide FAPE and would do so once the parents consented to services. The Assistant Director also wrote that the district was willing to reconvene a meeting to discuss the parent's concerns and amend the proposed IEP as needed if the team determined that amendments were warranted.

The student's father made a formal request for Independent Evaluations for Autism, mental health school based services, and eating issues on December 12, 2017.

On December 14, 2017, the student's father revoked consent for the release of information between the district and the private school. The Assistant Director responded via email to the parent, telling him that his consent was not needed to exchange information with the private school with regard to child find activities for the student. The parent responded via email stating that he never said that the

district could not contact the school, but insisted that the district must provide the parents with a written request/release of information form for parental review when requesting any specific information from the private school.

On December 15, 2017, the parents requested an IEP Team meeting to review and finalize the draft IEP.

On December 20, 2017, the district proposed a meeting for January 16, 2018. The parents shared that a December 19, 2017 evaluation at Children's Mercy Hospital found no evidence of Autism but did support previous diagnoses of ADHD and anxiety. The parent stated that the team may want to consider a categorical designation of ED (Emotional Disturbance) rather than OHI because of eating disorders and the diagnosis of anxiety.

On December 21, 2017, the Assistant Director emailed the student's father agreeing to his request for an IEE (Independent Educational Evaluation). She asked the parent to speak with her regarding specifics of his request so that she could provide him with a list of appropriate independent evaluators.

On December 21, 2017, the Assistant Director sent another email to the parent with several attachments including the following:

- Prior written notice clarifying eligibility, specifically that the district refused to change the categorical identification of the student from OHI to Autism, and stating that the team wanted to meet to discuss the parent's concerns and questions about eligibility, but had not yet been able to schedule that meeting.
- Prior written notice of the district's refusal to conduct a mental health evaluation since the district's initial evaluation had already included social/emotional/behavioral assessments.
- A copy of a revised Evaluation Report. The district had made changes to the report to address concerns and questions raised by the parents. Specific information was also added to the report regarding eligibility since decisions regarding eligibility determination were not made until the meeting and would not have been included in a draft report presented to the parents for discussion and review at the time of the meeting.
- A copy of the IEP. A draft copy was reviewed with the parents at the time of the November 13, 2017 IEP meeting. Changes were made to the document to address issues discussed at the meeting. The changes were highlighted in the current document. The district also noted that issues raised by the parents after the November 13th IEP meeting would be addressed in the upcoming IEP team meeting in January 2018.

- Prior written notice for the initial provision of special education services. This notice was a copy of the one provided to the parents and contained no amendments

The district received an email from the student's father on December 21, 2017 stating that the student did not have Autism (per the Children's Mercy evaluation). The parent again stated that the team might want to consider a categorical determination of ED rather than OHI. The parent also stated that he did not want to waste the time and resources of the district by requesting testing that would not be needed with regard to Autism.

On January 9, 2018, the Assistant Director spoke to the student's father by telephone. According to the Assistant Director, the parent withdrew his request for IEEs but requested that the team consider whether the student should be considered for identification under the category ED. The Assistant Director sent a follow up email to the parent to confirm that he did indeed want to withdraw his request for IEEs. She asked the parent to respond if this was ***not*** his intent. The Assistant Director also told the parent that the team would be reviewing the Children's Mercy evaluation report at the upcoming meeting on January 16, 2018 and would discuss any of the parent's concerns or questions.

On January 11, 2018, the Assistant Director emailed the parents a prior written notice form requesting consent to evaluate the student for categorical ED designation per parent request. The prior written notice form specified that the district intended to use existing information for the evaluation. The parent was told that he could either sign the form and return it prior to the meeting on January 16, 2018 or he could bring it to the meeting. The parent responded via email on January 11, 2018 stating he would print off the form and bring it to the meeting.

The January 16, 2018 meeting was cancelled due to inclement weather and rescheduled for February 20, 2018. The February 20, 2018 meeting was cancelled by the parents because of the hospitalization of the student, and the meeting was rescheduled for March 6, 2018.

A notice of meeting was sent to the parents on February 27, 2018 indicating that the purpose of the proposed March 6, 2018 meeting was to "review evaluation and IEP meeting."

On March 6, 2018, the School Psychologist emailed the parents, sending another copy of the final evaluation report and a reminder of the team meeting scheduled for later that day. The parent responded via email indicating that he planned to attend the meeting and asking why there was no mention of the Children's Mercy report and why no consideration had been given to anxiety with regard to determining the student's category. The School Psychologist wrote back to the parent explaining that at the time the Evaluation Report was developed on

November 13, 2017, the district had not been in possession of the Children's Mercy report. The psychologist also wrote that the district had not yet received the parent's signed consent to consider an ED designation but noted that the form could be printed for the parent's signature at the meeting. The team would then consider the report as a part of the evaluation process once consent was provided.

The March 6, 2018 meeting was scheduled for one hour beginning at 4PM. The parent arrived at approximately 4:30 PM and the student's private school teacher arrived shortly thereafter. The "Agenda" for the meeting (which was originally to have been held on January 16, 2018) stated that the purpose of the meeting was "to consider and discuss parent requests, review the recently completed Children's Mercy Evaluation, determine eligibility for ED and need for additional social/emotional/behavioral supports." Topics to be discussed included the following:

- "Parent Concerns
- Review/Summary of Children's Mercy Evaluation Report (note any proposed team changes during review)
- Review of emails from parents and their rationale for School-Based Mental Health Services (parent specifically requested: Individual and Family Therapy, Counseling and Therapy, mental health evaluation, social/emotional/behavioral goals)
- Discussion of the school's evaluation of eating/feeding
- Discussion of Eligibility for Emotional Disturbance
- IEP Discussion – Review of proposed changes based upon parent questions/input, new information from the Children's Mercy Evaluation, and any other appropriate changes
- Wrap-Up, Paperwork"

According to meeting notes provided by the district, the limitation on the number of agenda items that could be addressed in a shortened time period was discussed. The parent was asked to identify topics he wanted to prioritize for discussion; he spoke of concerns he had regarding the student's social skills (which the school team indicated would be addressed through the district's "Positive Action Curriculum") and asked for input on ideas to address OCD tendencies. The parent also provided the team with updates regarding the student's medical issues.

The School Psychologist reviewed the prior written notice for evaluation form (for ED as requested by the parent), and the parent gave written consent. The parent expressed concern about categorizing the student under the disability category of OHI referencing "failure to thrive." The team reviewed the definition for OHI and explained that "failure to thrive" is not covered under that exceptionality category.

The team moved on to review outstanding requests made by the parents. The following topics were covered:

- With regard to the eligibility section of the November 2017 evaluation report, the district asked for and received confirmation from the parent that his requests related to Autism and concerns regarding eligibility under the category of Autism were no longer current in view of the Children's Mercy report.
- Changes to the November Evaluation Report were reviewed.
- The topic of an eating evaluation was discussed (since the parent had asked for an independent evaluation in this area and subsequently withdrawn that request). Eating evaluation recommendations were specifically reviewed, and the parent indicated he had no questions or concerns. After discussion, it was determined that the parent's suggested eating goal would not be added to the student's IEP.
- The school team agreed with the parent with regard to some of the input he provided concerning the student's reading but after discussion determined that some of the specific goals/objectives proposed by the parents would not be included in the student's IEP but would be addressed through classroom instruction. As examples, the parents suggested that a metronome be used with the student, suggested playing memory games or Where's Waldo, and proposed including tasks that required the student to recall the order of a list of objects.
- The Assistant Director noted that time did not allow for a discussion of the goals suggested by the parents in the area of "executive functioning and social/emotional/behavioral goals," so these issues would need to be discussed at a subsequent meeting.
- Time did not allow for the discussion of all issues related to a school-based mental health evaluation and eligibility under the category of ED. These agenda items were tabled.

On March 10, 2018, the parent presented the district with an amended Evaluation Report. He had converted the document to Word and had included numerous changes.

On March 12, 2018, the parent made a second request for the student to be evaluated by the district with regard to social/emotional/behavioral health support, and counselling. (The district had previously provided the parent with prior written notice of refusal of a mental health evaluation on December 21, 2017 and provided written notice of refusal to provide counseling/social work services on November 28, 2017. The district had also previously agreed to meet to consider the parents' request for individual and family therapy and had agreed to evaluate the student with regard to the categorical ED designation.)

On March 14, 2018, the district sent the parents prior written notice of a March 27, 2018 meeting to discuss eligibility and address the student's IEP. The student's father cancelled that meeting due to illness.

A team meeting was held on April 18, 2018. The student's father presented a handout and a PowerPoint presentation to the school team. The parent indicated that the student has shown academic growth at her private school though her skills are not evident on formal assessments. The parent indicated that he and his wife would not be accepting the academic goals contained in the district's proposed IEP.

The father indicated that the "next step" for the team was to discuss OT goals. The Assistant Director stated that to date the district had not been provided with written consent for the provision of OT services. There was discussion about where those services would be provided; the parent wants OT services to be provided at the private school but the Assistant Director indicated that they would be delivered at the neighborhood public school.

The parent also requested that two goals/objectives be added to the student's IEP to address social/emotional and behavioral needs. There was discussion related to the student's classroom/school behavior.

The Assistant Director raised the issue of goals/objectives previously requested by the parents. Discussion followed as summarized below:

- Reading goal regarding automaticity: no concerns voiced by the parent
- Vision related goals (including memory games): the parent indicated these were being addressed by the private school and a vision specialist and were not of concern
- Eating goal (sampling everything on her plate and telling people how she feels about her food): the parent reported that eating would be better addressed at the elementary level so that the student does not develop an eating disorder. There was additional discussion about the student's current eating patterns, about suggestions provided to the parents, and about how eating issues could be addressed in the private school setting through accommodations.
- Interactions with peers: The student prefers playing with younger children rather that same age peers.
- The topic of outside reports was covered.
- ED criteria was read aloud and the student's behavior related to each criterion was discussed.

The team agreed to meet again to finish eligibility discussions and to discuss the IEP. The parent had brought papers with him to the meeting regarding mediation

opted not to request mediation at this point. The parent agreed to provide the district with a copy of the taped recording of the meeting which he had made.

To date, the parents have not provided the district with written consent for the provision of any special education services.

Issues

The parents have raised a total of four issues in their complaints.

Issue One: The district convened an IEP team meeting to address the student's eligibility for services before the parents had given written consent for the evaluation of the student.

Federal and State laws and regulations have specific requirements for requesting parent consent. Consent is always to be "informed consent." The Prior Written Notice must accompany the request for consent for each proposed special education action. The parent must agree in writing to the action for which his or her consent is sought (K.A.R. 91-40-27(a); 34 C.F.R. 300.300). Districts are required to obtain the written consent of the parent before conducting an evaluation.

Kansas has established a 60 school-day timeline for conducting an evaluation (K.A.R. 91-40-8(f)). The timeline for conducting the evaluation starts upon receipt of written parental consent and ends with the implementation of an IEP if the child is found eligible for special education services and once parents provide written consent for the provision of those services.

Parents' Position

The parents contend that they were not provided an evaluation consent form until they had arrived at an IEP meeting on March 6, 2018. It is the parents' position that the district should have followed up with them regarding the consent form prior to the meeting and obtained their written consent before convening a meeting to determine eligibility.

District's Position

The district asserts that an evaluation consent form was sent to the parents on January 11, 2018 after the parent (in a January 9, 2018 telephone call with the Assistant Director) requested that the district consider whether the student should be considered for identification for special education under the category ED. The form was sent as an attachment to a January 11th email from the School Psychologist who noted that the parent could either sign the form and return it prior to a scheduled meeting on January 16, 2018 or he could bring it to

the meeting. The parent responded via email on January 11, 2018 stating he would print off the form and bring it to the meeting.

The January 16th meeting was cancelled due to inclement weather, and a subsequently rescheduled meeting on February 19, 2018 was cancelled by the parent. A meeting was then scheduled for March 6, 2018.

The School Psychologist sent an email to the parents on March 6, 2018 reminding them of the meeting and noting that the district had not yet received written consent for evaluation. She stated that she would bring a copy of the form to the meeting and the parents could provide consent at that time.

The parent did not bring a signed consent form to the meeting as he had indicated in a January 11th email that he would, so according to the district, the School Psychologist provided the parent with a new consent form, reviewed the form with the parent, and obtained written parental consent to evaluate the student with regard to eligibility for special education services under the category of ED. The form stated that existing information would be used for the evaluation (as the School Psychologist had explained would be the case in her email of January 11, 2018).

The student's father gave his informed written consent for the evaluation on March 6, 2018.

It is the district's position that because the March 6, 2018 team meeting started approximately 25 minutes after the agreed upon time, the team was not able to address all topics on the proposed agenda, including the discussion of the student's eligibility for special education services under the categorical definition of ED. A subsequent meeting was scheduled to address this topic on March 27, 2018, but the parent cancelled that meeting.

Conclusions

On January 11, 2018, the parents were emailed a form requesting their informed written consent for the evaluation regarding ED eligibility which they had requested. The father indicated he would print off the form and bring it to a scheduled meeting but that meeting (as well as a rescheduled meeting) was cancelled. On March 6, 2018, the School Psychologist emailed the parents to remind them of the meeting and noted that the district did not yet have a signed copy of the consent form. The psychologist stated that a form would be brought to the meeting scheduled for that day. The consent form was brought to the meeting and signed by the parents at the start of the March 6th meeting.

No evidence has been presented by the parent to suggest that the team conducted the ED eligibility evaluation of the student prior to obtaining the written consent of the parent. That evaluation was – as specified in the consent form –

to be conducted using existing information which included the report of an outside evaluation presented by the parents. Records indicate that the team did not address ED eligibility during the March 6, 2018 team meeting due to time constraints, and a subsequent meeting scheduled to address eligibility on March 27, 2018 was cancelled by the parents. Therefore, while the district has now obtained parental consent for the ED-related evaluation, that evaluation has not yet been conducted. A violation of special education laws and regulations is not substantiated on this issue.

Issue Two: The district failed to consider the reports of outside evaluations when developing the November 11, 2017 Evaluation Report and when proposing an IEP for the student.

Once an initial special education evaluation has been completed and the information is compiled, the team should schedule a time to convene in order to make the determination of eligibility. Parents are to be provided an opportunity to participate in the eligibility meeting, which can be conducted at the same time as the IEP team meeting. The school must provide a notice of the meeting at least 10 calendar days prior to the meeting date that includes the requirements in K.A.R. 91-40-17(b)(1).

The team must ensure that information obtained from all sources used in the evaluation is documented and carefully considered (K.A.R. 91-40-10(d)(2); 34 C.F.R. 300.306(c)(1)(ii)). The parents and qualified professionals review the results of the initial evaluation to determine:

1. whether the child is a child with an exceptionality as defined in Federal and State laws and regulations (K.A.R. 91-40-1(k)(w); and
2. the educational needs of the child (K.A.R. 91-40-10(a)(1); 34 C.F.R. 300.306(a)).

The evaluation team shall ensure that the information obtained from all sources is documented and considered. After carefully considering all data and making the eligibility determination, the team then must document the decision made regarding the child's eligibility for special education and related services. Once the evaluation report and documentation of eligibility has been completed, each team member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions (K.A.R. 91-40-10(a)(2); 34 C.F.R. 300.311(b)).

The evaluation report serves as the documentation of the child's eligibility. The evaluation report and the documentation of eligibility must be provided, at no cost, to the parent (K.A.R. 91-40-10(b); 34 C.F.R. 300.306(a)(2)).

If the parent obtains an outside educational evaluation or provides the agency with an evaluation report developed by an outside source, the results of the evaluation and the report shall be considered by the school, if it meets the school's criteria, in any decision made with respect to the provision of FAPE to the child. However, the school is not obligated to implement the recommendations made by the outside evaluation team or to incorporate elements of the report into the student's IEP.

Parents' Position

The parents assert that the district did not include any reference to the December 19, 2017 outside evaluation by Children's Mercy Hospital in the student's November 11, 2017 Evaluation Report. The student's father further contends that the district did not consider the results of a May 16, 2017 evaluation by Stormont Vail Hospital when making decisions at the November 11, 2017 evaluation team meeting.

The parents also argue that the district refused to deviate from its established agenda for a meeting on March 6, 2018 in order to consider information provided to the team prior to the meeting. Specifically, the parent asserts that the team refused to review and discuss the Children's Mercy evaluation report during the meeting.

District's Position

The district maintains the parents did not provide the report of an outside evaluation of the student until January 2, 2018 – well after the November 13, 2017 meeting held for the purpose of reviewing the district's initial special education evaluation of the student and developing an initial IEP.

The district provided the November 11, 2017 Evaluation Report to show that the earlier Stormont Vail report was considered. The outside evaluation is referenced under "Comprehensive Psychological Evaluation" in the section labeled "Record Review." The Evaluation Report summarizes the purpose of the Stormont Vail evaluation, the information gathered, assessments administered (specifically the Wechsler Intelligence Scale for Children – Fifth Edition or WISC-V and the Spence Children's Anxiety Scale or SCAS), and the results of the evaluation.

The "Behavioral/Social Emotional Functioning" section of the report also references the outside assessment, noting that the results of the Childhood Autism Rating Scale, Second Edition (CARS-2) obtained at the hospital differ from those obtained by the school team stating that "consideration must be given to the different settings that (the student) was observed in."

Conclusions

The parents gave the district written consent to conduct an initial evaluation of the student on May 25, 2017, one day after the end of the 2016-17 school year. The district completed that evaluation and held a meeting to discuss the results with the parents on November 13, 2017, within 60 school days of the date consent was received. A draft Evaluation Report and a draft IEP were presented to the parents and discussed by the team at the meeting. (A final copy of the report which included eligibility determination information not established at the time the draft was developed was provided to the parents via email on December 21, 2017.) At the conclusion of the meeting, the parents were provided with prior written notice of the district's proposal to provide the student with special education services.

The parent did not provide the district with a copy of the outside evaluation report regarding the Children's Mercy evaluation until January 2, 2018. The results of that evaluation were not available for review at the time the initial evaluation report was written, were not discussed at the November 13, 2017 meeting, and were not a part of the information obtained through the initial evaluation process. Therefore, the district is not required to include any reference to that outside report or its findings in its eligibility report. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

The May 2017 evaluation conducted by Stormont Vail was directly referenced in the district's November 2017 Evaluation Report, a draft copy of which was provided to the parents on November 13, 2017. A final copy of the report was emailed to the parents on December 21, 2017. Both documents show that the district did ***consider*** the results of this outside evaluation when making decisions related to the provision of FAPE for the student. A violation of special education laws and regulations is not substantiated on this aspect of this issue.

Issue Three: The district predetermined services for the student before meeting with the parents.

There is no prohibition in special education laws and regulations against the convening of meetings by a school district for the purpose of preparation and planning for an upcoming team meetings. Drafts of evaluation reports or IEPs may be developed before those meetings. However, in order to ensure parent participation in the development of the IEP, the IEP may not be finalized before the IEP team meeting. Members of the IEP team may come with evaluation findings and recommended IEP components. If school personnel bring drafts of some or all of the IEP content to the IEP meeting, there must be a full discussion with the IEP team, including the parents, before the child's IEP is finalized, regarding content, the child's needs and the services to be provided to meet those needs. Parents have the right to bring questions, concerns, and

recommendations to an IEP meeting for discussion (Federal Register, August 14, 2006, p. 46678).

Parents' Position

The parents report that they have been told that the school team had met to discuss services as well the content of the IEP (specifically the development of goals and objectives). The parents contend that the district determined that the 17 goals and objectives presented by the parents were inappropriate before those goals and objectives were discussed with the parents. According to the parents, the school team did not offer to discuss why they believed that the parents' suggested goals and objectives were inappropriate, did not offer to rewrite the suggested goals/objectives to make them more appropriate, and did not offer to write goals/objectives to address the social/emotional needs identified by the parents. The parents further assert that the district has refused to accept that comorbidity exits between ADHD and anxiety.

Both parents state that they did not feel the district wanted to consider any facts that did not support the district's predetermined decisions regarding the student's needs and that a member of the team "twisted their words" to try to find ways to avoid providing services to the student.

District's Position

It is the contention of the district that while members of the school team had reviewed information presented by the parents prior to the March 6, 2018 meeting, that review had been conducted to ***prepare*** for the meeting but no decisions had yet been made with regard to that information. The district further contends that there was discussion at the March 6, 2018 meeting of goals related to reading (specifically automaticity in reading) and eating. According to the district, time did not allow for the discussion of the parents' proposed goals in the areas of reading (specifically executive functioning) and social/emotional behavior, but it was the intent of the district to discuss those goals/objectives in the meeting scheduled for March 27, 2018 which was cancelled by the parents due to illness.

Investigative Findings

The start of the meeting scheduled for March 6, 2018 was delayed due to the late arrival of the student's father and the student's classroom teacher from the private preschool. As a result, the team was not able to cover all of the items in the agenda.

Minutes of the meeting show that the team did address the topic of eating/ feeding. The Occupational Therapist offered to share recommendations with the parents who requested that she send those recommendations to them via email.

The Occupational Therapist also shared "recommendations for the school to address eating concerns." According to the meeting notes, the student's father indicated that he understood that "medication suppresses (the student') appetite…" The private school teacher noted that the student had "expressed interest in foods other than those she has consistently been interested in." The parents' suggested eating-related goal (("The student) will sample everything placed on her plate during snack or meal time 50% of the time and be able to people (sic) feeling about how she is feeling about her food appropriately 50% of the time.) was not included in the student's IEP based upon a review of the eating evaluation by staff and discussion of that evaluation.

The meeting minutes reflect that the topic of reading (particularly fluency and automaticity) was covered. The parents had proposed 5 goals related to automaticity in reading. The school team did indicate to the parents that while their suggested goals were not being incorporated into the student's IEP, they would be addressed through instruction. While instruction would not involve the use of a metronome as the parents had suggested, for example, the student's reading fluency (an element of which all parties agreed would be automaticity) would be measured using timed tests.

The two vision-related goals suggested by the parents were addressed but were not incorporated into the student's IEP.

The minutes reflect that the district recognized that the team still needed to address remaining goals suggested by the parents in addition to other topics.

Notes regarding a meeting on April 18, 2018 reflect the team's discussion of eligibility criteria with regard to the category of ED. The student's father and the district agreed to reconvene to complete discussion regarding ED eligibility at a subsequent meeting.

Conclusions

Special education laws and regulations allow school teams to review material presented by parents prior to a team meeting in order to prepare for that meeting and to come to that meeting ready to share recommendations [See K.A.R. 91-40-25(e)(2)]. The laws and regulations do not specify what a discussion of suggestions by parents must look like. Ultimately, it is the responsibility of the district to ***consider*** parental input and to propose an IEP for the student.

The district followed what to this investigator appears to be a reasonable procedure with regard to parental requests. A meeting was scheduled and an agenda developed that would facilitate discussion of the parents' suggestions. The material provided by the parents (specifically, suggested goals and objectives) was reviewed by staff and discussed in preparation for that meeting. The meeting was held and as time allowed, some of the parents' suggestions

were addressed. A record of the discussion was developed. Those goals/objectives not covered were identified. Another meeting was scheduled for the purpose of dealing with those goals/objectives not yet addressed (as well as other topics).

The actions of the team indicate that the suggestions of the parents have been – and are still being – considered. The district's decision not to incorporate some of the parents' goals and objectives does not in and of itself show that the district predetermined what would be included in the student's IEP. As will be shown under Issue Four, the district has shown a willingness to adopt many of the requests/inputs provided by the parents throughout the evaluation/IEP process. A violation of special education laws and regulations is not substantiated on this issue.

Issue Four: The district failed to consider input from the parents when determining special education eligibility and developing the student's IEP.

To address the requirement to strengthen the role of parents in the special education process, Congress mandated that schools afford parents the opportunity to be members of any decision-making team for their child, including eligibility, initial evaluation and reevaluation, and development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE). Schools are to ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child.

With regard to eligibility determination, teams should try to reach consensus about the eligibility decision. Parents who disagree with the report may, but are not required to, submit a separate statement. However, if the team cannot reach agreement, the final decision rests with the person who serves as the LEA representative at the eligibility determination meeting.

Parents should have the opportunity to express their concerns for enhancing the education of their child during the IEP meeting. This provides the parents an opportunity to share with the school what they see as the most important in meeting the needs of their child. The concerns of the parents must be considered by the IEP team ***but do not obligate the IEP team.***

The IEP team should work toward consensus. If the IEP team cannot reach agreement the LEA representative at the meeting has the ultimate authority to make a decision and then to provide the parents with appropriate notice and request consent of the proposed action as appropriate.

Parents' Position

It is the position of the parents that they have been shut out of the eligibility and IEP development process. The parents state that the district has refused to "alter or deviate from (an established) agenda to at least review the new information that was presented (by the parent)." Both parents have expressed to the investigator that they felt that there was no point in their attending the March 6, 2018 team meeting even though they have a far larger history with their daughter and her issues than does the school team.

District's Position

The district maintains that it has made every effort to consider the wealth of information and input provided by the parents both during and outside of all scheduled team meetings.

Investigative Findings

A review of the timeline shows that the parents took an active role in the design of the initial special education evaluation for the student. The district responded to parental requests and input by providing 5 amendments to their initial special education evaluation consent. While not every request of the parent regarding the evaluation process was accepted, several, including the following, were:

- screening for Autism using a specific instrument identified by the parents
- assessment by the Occupational Therapist in specific areas including Sensory Processing using assessment tools identified by the parents
- feeding/eating evaluation

The Evaluation Report (presented at the November 13, 2017 team meeting in draft form) was revised in part to reflect parental input. A copy of the revised Evaluation Report was provided to the parents on December 21, 2017.

The revision of the draft IEP initially presented to the parents on November 11, 2017 was also sent to the parents on December 21, 2017. The revised document contained changes in a number of sections which were made as a result of the team discussion of input provided by the parents. The changes included the following:

- additions to the section entitled "Strengths of the Student"
- the inclusion of diagnostic medical information in the "Educationally Relevant Medical Issues" section
- additions to the "Social/Behavioral/Emotional Needs"
- additions to the "PLAAFP" section of the annual goal related to math

- additions to the “PLAAFP” section of the annual goal related to reading
- additions to the “Program Modifications and Accommodations” section

After the November 13, 2017 meeting, the parents raised a number of issues which the district has addressed or attempted to address over five subsequent meetings. Only one of the proposed meetings was actually held, and the time allocated for that meeting was reduced due to the late arrival of the parent and the private school classroom teacher. The other four meetings were cancelled because of inclement weather, the unavailability of the private school teacher, or medical issues related to the student or her father. The district has continued to propose meetings to complete discussion of issues raised by the parents.

The district agreed to an Independent Educational Evaluation requested by the parents (although the parents subsequently withdrew their request for an IEE).

The parents have indicated that they do not intend to agree to the provision of special education services to the student in the public-school setting and have stated that they believe the student is successful in her current private school placement, but they have nonetheless provided the district with a list of 17 suggested IEP goals/objectives covering the following areas:

- Automaticity in reading
- Executive Functioning
- Vision
- Social/Emotional Behavior
- Communication and Social Skills
- Eating

The district has demonstrated a willingness to discuss these goals/objectives with the parents at scheduled meetings (as demonstrated through the agenda for the March 6, 2018 meeting), but time has not yet allowed for all goals/objectives to be covered.

While the student’s eligibility for special education services under the category of Other Health Impaired was established at the November 13, 2017 meeting, the district has agreed to conduct an evaluation of the student requested by the parents for the purpose of determining the student’s eligibility under the category of Emotional Disturbance. Written consent for that evaluation was provided by the parents on March 6, 2018. The 60 school-day period allowed by special education laws and regulations for the completion of this evaluation has not yet elapsed. The district had anticipated that eligibility would be discussed at the March 6, 2018 team meeting, but the parents did not prioritize this discussion when asked what topics they wanted to cover in the time allowed, so this evaluation is still ongoing.

All of the parents' proposed goals were addressed during a team meeting on April 18, 2018. Meeting notes reflect that the input of the student's father was considered.

Conclusions

While the district has not agreed with or implemented each and every suggestion provided by the parents, there is no indication that the parents have been excluded from contributing to planning and decision-making regarding their daughter. There is ample evidence to show that the district has considered the input of the parents throughout the evaluation and IEP process and has continued to make good faith efforts to include the parents in what has been and continues to be an extended decision-making process for the student. A violation of special education laws 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 laws and regulations on issues presented in this complaint. Therefore, no corrective actions are warranted.

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, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

For Diana Durkin, Complaint Investigator

Mark Ward
Attorney II
Early Childhood, Special Education and Title Services
(785) 296-7454
mward@ksde.org
www.ksde.org
Kansas State Department of Education
LANDON STATE OFFICE BUILDING, 900 SW JACKSON STREET, SUITE XXX, TOPEKA, KS 66612

(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).

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON MARCH 26, 2018

DATE OF REPORT: APRIL 25, 2018

This report is in response to a complaint filed with our office by _____ on behalf of her son, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the mother" or "the parent." The complaint was received on March 26, 2018. The Kansas Department of Education allows for a 30 day timeline to investigate the child complaint which ends on April 25, 2018.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ staff by telephone on April 10, 2018. USD #___ made the following staff persons available as part of the investigation process:

- M, Director of Special Education
- C, Special Education Coordinator
- N, School Psychologist

The Complaint Investigator also spoke to the mother by telephone on April 6 and April 17, 2018 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Email correspondence dated October 18 and October 19, 2017 between N and the mother regarding the request for a special education evaluation
- Prior written notice (PWN) for Evaluation or Reevaluation and Request for Consent dated October 18, 2017 and signed by the mother on the same date
- Student Intervention Team (SIT) notes related to the student dated October 26, 2017

- SIT notes related to the student dated March 1, 2018
- Email written by N dated March 1, 2018 regarding the progress of the special education evaluation
- Email correspondence dated March 27, March 28, March 29, and March 31, 2018 between N and the mother regarding arranging the eligibility determination and IEP team meeting
- Notification of Meeting (NOM) dated March 29, 2018 scheduling an IEP meeting for April 5, 2018
- Email dated April 4, 2018 from N to the mother reminding her of the IEP team meeting and informing her of the meeting agenda including considering compensatory services
- Student Invitation to IEP Meeting dated April 5, 2018 indicating the student would not be attending the April 5, 2018 IEP team meeting
- Evaluation Summary Report dated April 5, 2018
- Meeting Summary of the IEP meeting held on April 5, 2018
- PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 5, 2018
- Email dated April 10, 2018 from N to the complaint investigator regarding updated procedures
- Copy of the 2017-18 school calendar for USD #___

Background Information

This investigation involves a 14 year-old boy who is enrolled as an eighth grade student at ____ Middle School in USD #___. Records show the student was initially evaluated for special education services during the 2017-18 school year.

Issues

The complainant raised one issue which was investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegations in this complaint cover the time period during the 2017-18 school year which began on August 17, 2017 through the present.

ISSUE ONE: The USD #___ and the _____ Special Education Cooperative, in violation of state and federal regulations implementing the

Individuals with Disabilities Education Act (IDEA), failed to conduct a special education evaluation of the student in a timely manner during the 2017-18 school year.

Findings:

State and federal regulations, at K.A.R. 91-40-8(f) and 34 C.F.R. 300.301(c), require a 60 school-day timeline for conducting an initial special education evaluation. This timeline begins upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services or the completion of the evaluation report if the child is not found eligible for special education services.

State and federal regulations, at K.A.R. 91-40-8(f) and 34 C.F.R. 300.301(d), provide for only three specific instances when an extension of the 60 school-day timeline may be justified: a) The parent of the child repeatedly fails or refuses to produce the child for the evaluation; or, b) If a child enrolls in a new district after the evaluation has begun and before the determination of eligibility, however, the new district is required to make sufficient progress to ensure a prompt completion of the evaluation, and the parent and the school district must agree to a specific timeline for completion; and c) If the parent and the school agree in writing to extend the timeline.

The mother reported she has been concerned with the student's progress over the past several school years and had shared these concerns with school staff. She indicated that she made a written request for a special education evaluation of the student on October 7, 2017 to determine if the student would be eligible for special education and related services.

The mother reported and documentation showed the parent was provided with a PWN for Evaluation or Reevaluation and Request for Consent dated October 18, 2017 and signed by the mother on the same date. Emails and interviews found the consent was received by the N, School Psychologist on October 19, 2017.

The mother indicated she received no further communication in regards to the special education evaluation. On February 13, 2018 she contacted the school psychologist to check on the status of the evaluation. The mother met with Mr. N and reminded him that she had provided consent for the special education evaluation on October 18, 2017. Mr. N indicated the tests given so far were inconclusive and that he would be administering additional assessments. Mr. N stated that a meeting would be scheduled within the next few weeks.

The mother then contacted the principal of the school who informed her that Mr. N should have the evaluation completed by February 23, 2018 and that Mr. N would schedule an eligibility determination meeting at that time.

On February 23, 2018, Mr. N called the mother and indicated that an additional week would be needed to complete the special education evaluation. The mother reported that she believes the testing of the student did not even begin until February 23, 2018 as the student indicated that this was the first time he had been pulled from class to meet with Mr.N.

On March 1, 2018, Mr. N called the mother and proposed getting support in the student's classrooms and having him take the assessments outside of the general education setting. SIT team notes and an email from Mr. N to the mother confirm the possible schedule changes and testing accommodations for the student. In addition, the email and parent report show the administration and scoring of all assessments in the special education evaluation had not yet been completed.

The parent was provided with a NOM dated March 29, 2018 scheduling an eligibility determination and IEP team meeting for April 5, 2018.

The mother reported and documentation showed the eligibility determination and IEP team meeting was held on April 5, 2018 with the parent in attendance. At this meeting the student was found eligible for special education due to the exceptionality category of Learning Disabled, specifically in reading comprehension. An IEP was developed that includes a reading comprehension goal, 45 minutes per day of special education support in the general education setting, and accommodations/modifications to address organization, processing speed, and reading comprehension.

The mother reported and documentation showed the IEP team also considered and discussed several options to address the eligibility determination delay of 36 school-days beyond the 60 school-day timeline and the possible need for compensatory services. It was determined that compensatory services were owed to the student due to the delay in determining eligibility. The options considered by the team to provide these compensatory services included services during the school-day, services after school, and services during the summer. The mother chose to have compensatory services provided during the

school-day so as not to “punish” the student with extra time in school either after school or in the summer.

The mother was provided with PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent on April 5, 2018. For the period of April 5 through May 23, 2018, the PWN states “*Due to the evaluation exceeding the 60 day timeline by 36 school-days, the student will receive 50 minutes of specially designed instruction in the special education setting 5 days per week.”* Documentation shows the mother signed consent for services and placement that same day.

Mr. N reported that a paperwork filing error resulted in the delay in completing the evaluation of the student in a timely manner. A new procedure has been developed and instituted to ensure that all special education evaluation timelines are met in the future. This procedure is based on increased collaboration between the school psychologist, the school building counselors, and the classroom teachers.

Mr. N indicated he has taken the following steps to implement the new procedure to date:

1. Mr. N has provided a list of all pending evaluations and the 60 school-day “due date” for each evaluation to the building counselors in his assigned school buildings. This list will be updated as written parent consent for initial special education evaluation is obtained.
2. Mr. N has reviewed the status of all pending evaluations in his weekly meetings with the building counselors. He will continue to provide these status reviews to the building counselors during their scheduled weekly meetings.
3. Building counselors shared the status for each pending evaluation during their team meetings with the classroom teachers. These status reviews during the team meetings with the classroom teachers will continue during their scheduled team meetings.
4. Mr. N has met with all building counselors in his assigned school buildings to make them aware of the new procedure and encourage their cooperation.

In this case the 60 school-day timeline began on October 18, 2017 when the parent provided written consent to conduct the evaluation for special education. Based upon the school calendar, the 60 school-day timeline ended on January 30, 2018. Documentation and interviews found the student’s eligibility for special

education was not determined and an IEP was not developed until April 5, 2018 which is an additional 36 school-days beyond the original required January 30 due date. No documentation of an acceptable extension to the 60 school-day timeline was provided. USD #___ acknowledged the student's special education evaluation exceeded the 60 school-day timeline by 36 school-days.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to noncompliance with the requirement to complete the special education evaluation and determine eligibility no more than 60 school-days from the date the parent provides written consent to conduct an evaluation is substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on the issue presented in this complaint. Violations have occurred in the following area:

1. State and federal regulations, at K.A.R. 91-40-8(f) and 34 C.F.R. 300.301(c), require a 60 school-day timeline for conducting an initial special education evaluation. This timeline begins upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services or the completion of the evaluation report if the child is not found eligible for special education services.

   In this case, documentation and interviews found USD #___ obtained written parent consent to conduct an initial evaluation of the student on October 18, 2017. The student was found eligible for special education services on April 5, 2018. On that same date, an IEP team meeting was held to develop an initial IEP for the student and the parent was provided with PWN for services and placement for which she signed consent at that same meeting. Documentation shows an IEP initiation date of April 5, 2018 which is a total of 96 school-days from the date of obtaining the written parent consent. No evidence was provided to show an acceptable reason to extend the initial evaluation timeline.

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:
    a. Comply with K.A.R. 91-40-8(f) and 34 C.F.R. 300.301(c) which require a 60 school-day timeline (with the previously noted exceptions) for conducting an initial special education evaluation. This timeline begins upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services or the completion of the evaluation report if the child is not found eligible for special education services.

2. Note that individual correction of noncompliance related to conducting the initial evaluation within the 60 school-day timeline is not ordered. The noncompliance related to the delay of 36 school-days to determine eligibility and the implementation of the IEP has already been addressed by the student's IEP team with the decision that compensatory services are owed to the student. Documentation and interviews found the mother participated in the discussion of options and chose an option that she believed was best for the student. The mother was provided with a PWN for an additional 50 minutes per day of specially designed instruction in the special education setting and provided written consent for the action. USD #___ has proactively corrected the identified noncompliance for the student.

3. Note that USD #___ has already reviewed procedures and practices related to monitoring pending evaluations and due dates. A new procedure has been developed and implemented per school staff report. No later than June 1, 2018, USD #___ will provide documentation such as team meeting notes, meeting agendas, etc. documenting that this new procedure being implemented in the school buildings assigned to Mr.N . This documentation will be provided to Early Childhood, Special Education and Title Services.

4. Further, USD #___ within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON MAY 7, 2018

DATE OF REPORT: JUNE 6, 2018

This report is in response to a complaint filed with our office by _____, Educational Advocate, on behalf of _____ and his family. In the remainder of this report, _____ will be referred to as "the student" and _____ will be referred to as "the complainant." The complaint was received on May 7, 2018. The Kansas Department of Education allows for a 30 day timeline to investigate the child complaint which ends on June 6, 2018.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed USD #___ staff by telephone on May 29, 2018. USD #___ made the following staff persons available as part of the investigation process:

- D, Superintendent
- W, High School Principal
- A, English Language (EL) Instructor
- B, School Nurse
- P, Assistant Director of Special Education
- L, School Psychologist
- H, Director of Special Education
- R, Kansas Association of School Boards (KASB) Attorney

The Complaint Investigator interviewed the complainant by telephone on May 21, 2018 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Section 504 Referral dated May 19, 2016 and eligibility recommendation dated August 22, 2016

- Prior written notice (PWN) for Evaluation or Reevaluation and Request for Consent dated November 17, 2016 refusing to conduct a special education evaluation of the student
- Email correspondence between Ms. H and M, Instructional Specialist and Advocate, Migrant Education Program, SEKESC-Greenbush dated December 20, 2016
- School Psychologist Log from the 2017-18 school year
- Medical Chart Summary dated February 22, 2018 from Dr. Vance Lassey, Neurologist
- Log Entries from USD #___'s student information system written by various school personnel dated between January 19, 2016 and April 30, 2018
- Email to B dated February 21, 2018 from Dr. Lassey
- Email to B dated April 27, 2018 from Dr. Lassey
- Progress Report dated May 18, 2018
- Summation of Accommodations and Modifications provided to the student during the 2017-18 school year
- Student Report for the Kansas English Language Proficiency Assessment (KELPA2) for the 2017-18 school year
- Copy of the _____ Special Education Cooperative policy regarding General Education Interventions (GEI), Referral, Evaluation and Eligibility Process for Special Education
- Notes from the general education math class written by J dated between August 21, 2017 and January 8, 2018
- Student Language Portrait written by A
- Copy of the student's Official Transcript showing grades for the 2016-17 and 2017-18 school years

Background Information

This investigation involves a 17 year-old male who was enrolled in the 10th grade at ____ High School in USD #___ during the 2017-18 school year. Records indicate the student first enrolled in the district during the 2015-16 school year as an 8th grade student.

Prior to his enrollment, the student lived in Guatemala. Both parties report the student's first language is Chu'j, a Mayan dialect, and that his Spanish and English language skills are minimal. Since his enrollment at USD #___, the student has received English Language (EL) services and supports. The student

was initially evaluated for a Section 504 plan at the end of 8th grade and he continues to be supported through a Section 504 Plan at this time. The student has never been evaluated for special education services.

Issues

The complainant raised two issues which were investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegations in this complaint cover the time period beginning May 7, 2017 through the present time.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to comply with child find requirements by not conducting a special education evaluation of the student within the past 12 months.

Findings:

School staff report the only time the student was referred for an evaluation was in November 2016. The parent made the referral in writing on November 2, 2016 and the district considered the request and did not believe there was reason to suspect a disability requiring specialized instruction at that time. USD #___ responded by providing the parent with a Prior written notice (PWN) for Evaluation or Reevaluation and Request for Consent dated November 17, 2016 refusing to conduct a special education evaluation of the student. USD #___ reported the student was not referred for a special education evaluation by either the parent or any school staff during the 2017-18 school year.

The USD #___ and ____ Special Education Cooperative have a written policy which includes the use of general education interventions prior to a referral for a special education evaluation "*unless there is extensive documentation (e.g., medical reports of a specific medical condition) demonstrating student has obvious needs beyond what is available in general education."*

The complainant believes there was ample reason to suspect the student has a disability and was in need of specialized instruction both in November 2016 as well as currently. However, as noted previously, the focus of this investigation will only cover May 7, 2017 through the date of the report

Documentation and interviews found the student was referred for a Section 504 Plan by school staff at the end of the 8th grade on May 19, 2016 because "*the student has some un-diagnosed developmental delays that will have stunted his academic progress, possible medical issues that could compromise his health and a language barrier that creates a situation of almost non-communicating."*

An evaluation was conducted which documented math skills at the first/second grade level and reading skills at the pre-emergent or Pre-K level. A nonverbal IQ test found his logic and reasoning skills were in the low range and his overall IQ was in the very low range. The evaluation noted that reading and math specialist services were being provided to the student along with one-to-one support of the EL paraprofessional for modified school work and some practical life skills training. The report also noted the student has a medical condition that results in seizures brought on by heightened physical activity. Documentation shows the student was determined eligible for a Section 504 Plan on August 22, 2016 with the recommendation that a Section 504 Plan be developed beginning in 9th grade "*to create major teacher lead adjustment/modifications to curriculum, put in place continued reading and math support on student level and to allow for modified PE time."*

On November 2, 2016, the student's father requested a special education evaluation in a letter written to W, High School Principal. The parent describes his concerns as "*The student does not retain information. He is not making progress in Math or in learning the letters of the alphabet. He has also worked on body parts and is still unable to identify a hand. We have worked on letters and math at home. He has been in school for a good year now with no progress. The student's doctor has told us that he appears to have a lesion on his brain from a MRI in 2010. This lesion was most likely a result of an infection. This lesion does cause a seizure disorder and is a possible reason for his slow learning."*

USD #___ provided the parent with a Prior written notice (PWN) for Evaluation or Reevaluation and Request for Consent dated November 17, 2016 refusing to conduct a special education evaluation of the student. The explanation for the action states "*After reviewing the student's records it has been determined that the ____ Special Education Cooperative (____) will not complete an evaluation to determine whether the student would qualify for and is in need of special education services at this time. The school has recommended that a change to the student's current EL programming would be the most appropriate way to meet his needs at this time."* The PWN states the comprehensive evaluation was

rejected because records indicate a least two exclusionary factors that would likely play a role and impact the eligibility determination, specifically lack of instruction prior to enrolling in school in the United States and his acquisition of the English language which greatly impacts his academic progress. Other relevant factors considered were the restructuring of the EL programming to better meet the student's needs.

Email correspondence dated December 20, 2016 between H, Director of Special Education, and M, Instructional Specialist and Advocate for Migrant Education Program, regarding monitoring the student's progress. Ms. M indicated she was trying to obtain a copy of the brain scan from the family. She noted that the EL teacher would be monitoring progress within the restructured EL program. She also indicated the student has great difficulty retaining information even in Spanish based on her work with the student. Ms. H stated the EL program was specifically changed to provide the student with individualized instruction for language acquisition as well as significant individualized support. The team believed the student's needs are best met at this time through this restructured EL program and that progress would be monitored to see if an evaluation were warranted in the future.

The student's grades at the end of second semester of the 9th grade school year were A+ in four ESL Tutor classes and Alternate Education Program (AEP) Math class; A in Physical Education (PE); B in AEP Reading class; and D in General Spanish. The transcript shows the student was promoted to the 10th grade for the 2017-18 school year.

J, Math Teacher, reported the student took a math placement exam that included multi-digit addition/subtraction and counting coins on August 21, 2017. These were all skills covered during the previous school year; however, the exam results showed the student did not retain any of the information over the course of the summer. Ms. D reported the student still had trouble identifying just pennies and nickels on September 21, 2017 even though he had mastered this skill last school year. Log entries for the Essentials of Math class reflected the student continued to struggle with basic coin identification and value on October 10, October 18, and November 7, 2017.

Notes from L, School Psychologist, document the staff met on October 5, 2017 to discuss current interventions and develop a plan for moving forward. The notes reflect continued staff concerns regarding retention of newly taught skills as well as no identified curriculum for literacy/reading skills. However, Ms. D continued

to “plug away at math computational skills.” It was recommended to gather baseline data using early childhood checklists to see what the student was capable of doing. Staff discussed classroom strategies for increasing vocabulary. Staff also discussed setting up community based educational opportunities for the student to work on job related skills; however the high school staff “*felt this was too big and they didn’t have staffing available to make that happen.”*

The student’s grades at the end of the first semester of the 10th grade school year were A in choir class; A- in Lifetime Fitness; B in both AEP classes and the ESL English 2 class; C in both ESL Tutor classes; C- in Essentials of Math; D- in Earth and Space Science; and F in Spanish 1.

A Summation of Accommodations and Modifications describes the student’s performance in several of his classes as follows:

ESL Tutoring: uses a personalized curriculum which includes pre- and emergent literacy instruction and considerable repetition along with non-literate cognitive development with puzzles, series and construction models.

Spanish: because there were no official recommendations for working with the student other than EL, he failed first semester. Currently he is passing the class because of participation grades as there is little else to grade in class. He can speak some Spanish and can be generally understood. On written work he will copy various, often random letters or words from one part of the worksheet to any blank line on that same worksheet. Worksheets were modified e.g. pictures of clothes the student was instructed to color each a specific color; however, the student was still unsuccessful. When given oral choices, the student generally choses the last one.

PE: modified/abbreviated warm-up period, less/limited running, no lifting over his head, modified use of equipment, substituted dumb bells for straight bars, allowed frequent breaks and option to sit out as needed.

Science: modified the assignments to include only practical terms, facts, and experiences, worked one-to-one with the EL paraprofessional during class for 30 minutes and then one-to-one with the teacher for 30 minutes each class period, allowed to work with a partner on hands-on projects such as race car velocity lab, buoyant butter lab, etc.

The science teacher noted he struggled with trying to make accommodations for his diverse classroom of "*high achieving English learners to as limited as the student is.*" The Spanish teacher noted "*There is little he can do in a regular education class no matter the accommodation*."

Beginning on August 24, 2017, log entries document an increase in seizure activity, multiple medication changes, and significant changes in behavior. Fifteen separate incidents were recorded during first semester of the 2017-18 school year and describe the student as having hallucinations and displaying bizarre behavior such as staring into space and being nonresponsive, suddenly arching his back with stiff extremities, running and screaming in the classroom, falling to the floor and rolling around, and not remembering how to write his name.

During January 2018 nine log entries were made related to seizure activity. On four of those dates, the student was sent home for medical reasons. B, School Nurse, and W, High School Principal, spoke with the family and recommended medical attention due to the increased onset of medical issues on January 31, 2018. Log entries also noted seizure activity at school on February 7, February 13, and February 19 with the student reportedly hearing voices, sobbing, becoming aggressive, and falling to the floor in convulsions.

On February 21, 2018, Dr. Vance Lassey, the student's physician, wrote an email to Ms. B describing medication changes based on recommendations from a neurology sub-specialist (an epileptologist). Dr. Lassey stated "*since I have a 4th year medical student who is natively fluent in Spanish, we did some cognitive testing on him last week as well, and he scored very low, consistent with moderate cognitive impairment. I believe that this comes from the brain damage that he sustained in infancy based upon his recent contrast MRI, which I had read by a neuro-radiologist."* Dr. Lassey noted the student has severe epilepsy, communication barriers as well as the "*significant burden of cognitive impairment, or mental retardation*." Dr. Lassey states ". . . *because of the cognitive impairment, I feel confident that managing his care would still be difficult even if he and his family were fluent in English."* Finally, Dr. Lassey concludes "*I see no reason that the student should be in public school, especially if he has little to no benefit, and he poses a threat to others or represents a major distraction for the other students."*

During an interview, Ms. B indicated that she forwarded this email to Mr. W. Mr. W and the school staff stated that a referral for special education was not made

at this time because they were focusing on the student's medical issues and did not believe the cognitive testing conducted with Dr. Lassey was a valid measure of the student's ability due to the assessment not being administered in Chu'j. School staff indicated that while the student was not making progress in English language proficiency, they believed he was making improvements in math and this is a typical pattern of skill acquisition for EL students. School staff also reported that they did not interpret Dr. Lassey's comments regarding school attendance as a medical excuse from attending school.

Only one Log Entry was made on March 2, 2018 reporting the student had a seizure and was sent home for medical reasons.

The Log Entries for April 4, 2018 document the student had an hour long episode that "*started out as a seizure, however then it became apparent that it was more violent. It almost seemed psychotic-like in nature."* During this episode, Ms. B talked with Dr. Lassey and reported that Dr. Lassey was upset because he thought the student had been staying at home as ordered. Once the episode was over, the student was sent home for medical reasons.

Log Entries for both April 5 and April 9, 2018 show the student came to school but was immediately sent home both days pending an April 11, 2018 appointment with Dr. Lassey.

A note from Dr. Lassey dated April 27, 2018 which states "*I have recommended that the student remain out of school for at least the rest of this year, but homebound services as tolerated and reasonable, if he clearly benefits from them."*

Documentation and interviews found that Mr. W, Ms. B, and D, Superintendent, met with Dr. Lassey on April 30, 2018. Dr. Lassey sent an email to Ms. B on that same date summarizing the student's case as "*the student has epilepsy and significant cognitive impairment, presumably due to MRI-demonstrated scar tissue and softening of the brain, likely due to brain damage from prolonged lack of oxygen some point in infancy, probably at birth . . . He has had both severe grand mal seizures at school, as well as bizarre, sometimes physically dangerous behavior secondary to hallucinations, likely from medication side effects."*

Ms. B again indicated that she forwarded this email to Mr. W. School staff again reported that a referral for special education was not made at this time because they were focusing on the medical needs of the student.

Documentation and interview found that USD #___ offered to provide homebound services but the parent refused these services.

State and federal regulations, at K.A.R. 91-40-7 and 34 C.F.R. 300.111, require school district's to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including children with exceptionalities who are highly mobile, including migrant and homeless children, or are suspected of being children with disabilities even though they are advancing from grade to grade.

In this case, it appears there were multiple reasons to suspect the student was a child with a disability and in need of special education and related services. First is evidence that the student was failing to make progress during the course of the 2017-18 school year even with the GEI consisting of the use of a modified individualized curriculum, multiple classroom accommodations and modifications, the provision of EL services and supports as well as the use of one-to-one instruction by the classroom teachers and EL paraprofessionals. Teachers reported the student had difficulty learning new concepts, retaining skills, and transferring learning from one environment to another environment. In addition, there are two medical opinions from Dr. Lassey dated February 21 and April 27 indicating the student has both a moderate to significant cognitive impairment and a seizure disorder resulting from some type of brain injury. However, despite these red flags, no school staff at USD #___ ever made a referral for a special education evaluation.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to noncompliance with the requirement to identify, locate, and evaluate children with exceptionalities residing in its jurisdiction, including children with exceptionalities who are highly mobile, including migrant and homeless children, or are suspected of being children with disabilities even though they are advancing from grade to grade is substantiated.

> **ISSUE TWO:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to follow appropriate discipline procedures for the student when removing him from school during second semester of the 2017-18 school year.

Findings:

Federal regulations, at 34 C.F.R. 300.530 require school districts to follow specific procedures when removing a child with a disability or a child suspected of having a disability from their current educational placement due to a violation of a code of student conduct.

The findings from Issue One are incorporated herein by reference.

Documentation and interviews with USD #___ staff found the student has not been disciplined or removed from the school setting due to a violation of a code of student conduct during the 2017-18 school year.

In this case, while the student has been removed from the school setting for an extended period of time, it appears these removals were the result of a physician's orders and were for the care and safety of the student based on medical issues. Based on the foregoing, the allegation related to following appropriate disciplinary procedures is not substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on the issue presented in this complaint. Violations have occurred in the following area:

1. State and federal regulations, at K.A.R. 91-40-7 and 34 C.F.R. 300.111, require school district's to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including children with exceptionalities who are highly mobile, including migrant and homeless children, or are suspected of being children with disabilities even though they are advancing from grade to grade.

   In this case, documentation and interviews found multiple reasons to suspect the student was a child with a disability and may be in need of special education and related services during the past 12 months. There is evidence that the student was failing to make progress during the course of the 2017-18 school year even with the GEI consisting of the use of a modified individualized curriculum, multiple classroom accommodations and modifications, the provision of EL services and supports as well as the use of one-to-one instruction by the classroom

teachers and EL paraprofessionals. Teachers reported that despite these interventions, the student still had difficulty learning new concepts, retaining skills, and transferring learning from one environment to another environment. In addition, there are two medical opinions from Dr. Lassey dated February 21 and April 27 indicating the student has both a moderate to significant cognitive impairment and a seizure disorder resulting from some type of brain injury.

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:

    a) Comply with State and federal regulations, at K.A.R. 91-40-7 and 34 C.F.R. 300.111, which require school districts to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including children with exceptionalities who are highly mobile, including migrant and homeless children, or are suspected of being children with disabilities even though they are advancing from grade to grade.

2. Prior to the first day of attendance for students in the 2018-19 school year, USD #___ shall provide training to all administrative and teaching school staff members on their responsibility to identify, locate, and evaluate any student suspected of having a disability and in need of special education services. This training will be provided by a person approved by the Early Childhood, Special Education and Title Services. Documentation of the content of the training and who attended the training will be provided to Early Childhood, Special Education and Title Services no later than August 30, 2018.

3. USD #___ shall follow the referral and evaluation process to provide a special education evaluation for this student. This process shall include a Prior Written Notice (PWN) and request for consent for an initial evaluation of the student, presented to the education decision maker of this student no later than the first day of student attendance at school in the 2018-19 school year. If the student is found eligible for special education, the IEP team will offer compensatory services back to the date the student would have initially been found eligible based on the date the team determines there was reason to suspect a disability during the 2017-18 school year

which will be at a minimum February 21, 2018. Documentation of the referral, evaluation, and prior written notices shall be provided to Early Childhood, Special Education and Title Services no later than September 30, 2018. Documentation of the completion of the evaluation shall be sent to Early Childhood, Special Education, and Title Services within 10 days of the date of the eligibility meeting for this student.

4. Further, USD #___ within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON APRIL 30, 2018

DATE OF REPORT: MAY 30, 2018

This report is in response to a complaint filed with our office by ___ and ____ ____ on behalf of their son, _____ ____. In the remainder of this report, ____ will be referred to as "the student." ____ ____ will be referred to as "the father" and ____ ____ will be referred as the "mother" and when referring to both, "the parents" will be used. The complaint was received on April 30, 2018. The Kansas Department of Education allows for a 30 day timeline to investigate the child complaint which ends on May 30, 2018.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ staff by telephone on May 9, May 14, and May 15, 2018. USD #___ made the following staff persons available as part of the investigation process:

- J, Superintendent
- R, Elementary School Principal
- M, Director of Special Education
- F, Special Education Teacher
- F2, 619 Paraprofessional
- M2, 619 Paraprofessional

The Complaint Investigator also spoke to the father by telephone on May 7 and May 17, 2018 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Individualized Education Program (IEP) dated May 11, 2017
- Behavior Intervention Plan (BIP) dated May 11, 2017

- Prior written notice (PWN) for Evaluation or Reevaluation and Request for Consent dated March 7, 2018 and signed by the mother on the March 14, 2018
- Evaluation / Eligibility Team Report dated May 3, 2018
- IEP dated May 3, 2018
- PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 3, 2018
- Summary of BIP implementation during the 2017-18 school year written by S, Kindergarten Teacher
- Response to Allegations written by R, Elementary School Principal
- Copy of the 2017-18 school calendar for USD #___

Background Information

This investigation involves a 6 year-old boy who was enrolled in kindergarten at C___ Elementary School in USD #___ during the 2017-18 school year. Records indicate the student has received special education and related services since the age of three. Documentation shows the student was initially evaluated for special education services in preschool and found eligible for special education under the exceptionality of Developmental Delay. A reevaluation was conducted on May 3, 2018 which determined the student continued to be eligible for special education under the same eligibility category.

Issues

The complainant raised one issue which was investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegations in this complaint cover the time period during the 2017-18 school year which began on August 22, 2017 through the present.

ISSUE ONE: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written by not following the behavior implementation plan (BIP) in the music class during the 2017-18 school year.

Findings:

In the case of a child whose behavior impedes his learning or the learning of others, federal regulations, at 34 C.F.R. 300.324(a)(2)(i), require IEP teams to consider the use of positive behavioral interventions and supports and other strategies to address these behaviors. In June 2009, the Office of Special Education Programs (OSEP) published guidance related to behavior intervention plans (BIPs) in *Questions and Answers on Discipline Procedures.* Question E-2 in this document addresses when a BIP should be included in a child's IEP and explains: "For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, . . . the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child."

Federal regulations, at 34 C.F.R. 300.101, require school district's to make a free appropriate public education available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, define the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP which must include a BIP if one is developed to address the behavioral needs of the child.

Federal regulations, at 34 C.F.R. 300.323, require that each public agency must ensure that (1) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; (2) Each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP; and, (3) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

Federal regulations, at 34 C.F.R. 300.324, requires that changes to the IEP to be made by the entire IEP team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP.

The parents reported the student has a history of trouble attending and paying attention in the classroom. He has a short attention span and needs frequent prompts to remain on task and to complete his independent work. The parents indicated that and IEP goal and a BIP were developed at the May 11, 2017 IEP team meeting to address these problematic behaviors. The parents allege the music class teacher behaved inappropriately toward the student during a class in April and was not following the behavior plan to provide the student with rewards for appropriate behavior using the star chart system.

The May 11, 2017 IEP includes the following goal to address behavioral concerns: "*By 5/11/18, the student will complete work, stay on task, and follow teacher directives with 2 or fewer prompts for 90% of the school day."* This IEP also includes a BIP describing positive behavior supports as *"When the student completes an adult directed task with no more than two verbal prompts, he will receive one star. After getting 5 stars in a class session, he will receive a reward of choice: sticker, goldfish, iPad time, or skittles."* The consequences for negative behavior are described as *"If the student does not comply with a teacher directive after 2 prompts, he can have a star removed after earning one. He will not receive a reward for the day if he does not have 5 stars at the end of the day. If the student refused to comply to teacher directives, he will go to time out for 5 minutes."*

Documentation shows S, the student's kindergarten teacher, attended the May 11, 2017 IEP team meeting and was aware of the BIP. R, C____ Elementary School Principal, indicated the two 619 paraprofessionals assigned to the student's kindergarten class had implemented the student's BIP the previous school year and were also aware of the BIP continuing into kindergarten.

Mr. R reported that a first year special education teacher was assigned as the case manager for the student at the beginning of the 2017-18 school year and Mr. R acknowledged there is no documentation to show that the student's IEP and BIP were ever shared with the music teacher.

Ms. S reported that the star chart was used during the first few weeks of school and the student was rewarded with skittles each time he earned five stars. However, the skittles reward quickly became ineffective and the rewards were changed to time playing Legos, watching a quick YouTube video, playing Angry Birds, or playing with cars.

In October, Ms. S and the mother discussed increasing the list of appropriate behaviors for the student to display in the classroom to also include following directions the first time, staying seated during story time, doing seat work neatly and in a timely manner, standing in line quietly and getting his business done in the bathroom without playing around. The student would continue to earn stars for displaying these behaviors but could also lose stars for making bad choices. Ms. S and the mother also discussed adding additional rewards for when stars were earned.

In addition to individual BIPs for students, C ____Elementary School uses both classroom and school-wide systems to support appropriate behavior. Ms. S reported that in addition to the star chart, the student was also earning Brag Tags along with his classroom peers for appropriate behavior which could result in a weekly trips to the Big Goodie Box. Also at this same time, the student was allowed to earn BlueJay Way Cards along with his school peers for displaying appropriate behavior. BlueJay Way cards were earned to attend a school-wide Reward Recess.

Ms. S reported that toward the end of November, the student began to lose interest in the star chart and wanted to know why he didn't get to use the same behavior chart the other students in his classroom. Ms. S indicated that she discussed the student's request with the mother. Ms. S reported the mother said she this was fine with her if that's what the student wanted. The student's picture was added to the classroom behavior chart and in January 2018 the star chart was discontinued and the classroom and school-wide behavior support systems were used to support the student's appropriate behavior. Also in January 2018, F was moved to C____ Elementary School and assigned as the student's case manager.

Ms. S reported that the student loved earning Brag Tags to fill his behavior book. When he fills 10 frames on each page he gets to earn a trip to the Big Goodie Box and also earns a BlueJay Way ticket. The student star chart was no longer used and the student never asked about it.

Documentation and interview found the mother signed consent for a triennial reevaluation of the student on March 14, 2018. The reevaluation was completed on May 3, 2018 and the student. The Social/Emotional Status section of the Evaluation / Eligibility Team Report notes that the student's inability to follow teacher or adult directives to stop touching things sometimes will cause him to be marked down on the classroom behavior chart.

The annual IEP meeting to review and revise the student's IEP was held on May 3, 2018 with the parents in attendance. The IEP team determined that the student did not display behaviors that would impede his learning or the learning of others. The IEP does not include a behavior goal or a BIP. The IEP documents the parents currently have no concerns regarding the student's behavior at this time. An interview with the father confirmed the parents pleased with the May 3, 2018 IEP and believed the student was doing well at school.

During the interview with school staff, Mr. R acknowledged that procedures were not followed to inform all school staff of their responsibilities regarding implementation of the IEP and that the BIP was not implemented as described in the May 11, 2017 IEP.

In this case, it appears that while the BIP was not implemented as written, school staff were monitoring student progress on the behavior goal and were taking steps to revise the behavioral supports to meet the student's needs. Over the course of the 2017-18 school year, the student made progress towards and achieved the behavior goal as evidenced by the May 3, 2018 Evaluation / Eligibility Determination Report and IEP. However, school staff failed to follow the process to amend the May 11, 2017 IEP to accurately reflect the individualized education program that was actually being provided to the student.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to noncompliance with the requirement to inform all staff of their responsibilities regarding implementation of the IEP, to implement the IEP and BIP as written, and to revise or amend the IEP as needed is substantiated.

Please note that the Kansas State Department of Education has jurisdiction to investigate allegations of a violation of federal and state special education laws and regulations. Accordingly, this investigation was limited to the special education requirements involved in this set of facts. To the extent the parents believe school personnel may have violated any provision in the Kansas Code for Care of Children or of the Kansas Criminal Code, they may consider contacting the Kansas Department for Children and Families or a law enforcement agency.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on the issue presented in this complaint. Violations have occurred in the following areas:

1. Federal regulations, at 34 C.F.R. 300.323, require that each public agency must ensure that (1) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; (2) Each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP; and, (3) The

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

In this case, staff from USD #___ acknowledged the music teacher was not informed of her specific responsibilities for implementing the IEP and BIP of the student during the 2017-18 school year.

2. Federal regulations, at 34 C.F.R. 300.101, require school district's to make a free appropriate public education available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP which must include a BIP if one developed to address the behavioral needs of the child.

   In this case, documentation showed the BIP included in the May 11, 2017 IEP specifically described the use of a star chart for both rewards and consequences to support appropriate behavior of the student. Documentation and interview found the star chart was implemented at the beginning of the 2017-18 school year but was completely replaced by another behavior support system beginning in January 2018.

3. Federal regulations, at 34 C.F.R. 300.324, requires that changes to the IEP to be made by the entire IEP team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP.

   In this case, changes were made to the star chart plan described in the student's IEP including identifying different target behaviors as well as changing rewards and consequences beginning in October 2017. The star chart was completely replaced with another behavior support system in January 2018. While it appears that the parent was included in the process of determining these changes over the course of the school year, there is no documentation to show that these changes were made by the entire IEP team at an IEP Team meeting or by amending the May 17, 2018 IEP which was in effect during the 2017-18 school year.

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:

a) Comply with federal regulations, at 34 C.F.R. 300.323, which require that each public agency must ensure that (1) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; (2) Each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP; and, (3) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

b) Comply with federal regulations, at 34 C.F.R. 300.101 and 34 C.F.R. 300.17, which require school district's to make a free appropriate public education available to all children residing within the district by implementing the IEP as written.

c) Comply with federal regulations, at 34 C.F.R. 300.324, which requires that changes to the IEP to be made by the entire IEP team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP.

2. Prior to the beginning of the 2018-19 school year, USD #___ shall review procedures and practices with all special education case managers to ensure that each teacher and provider has been informed of their responsibilities for implementing the IEPs of all students with exceptionalities. In addition, USD #___ shall provide documentation that each teacher and provider of the student has been informed of their responsibilities for implementing the IEP. Documentation of these two actions will be provided to Early Childhood, Special Education and Title Services no later than August 30, 2018.

3. Note that individual correction of noncompliance related to failure to implement the IEP as written and to review/revise or amend the IEP and BIP during the 2017-18 school year is not ordered. While the student's BIP was not implemented as written nor updated during the 2017-18 school year, school staff were monitoring student progress on the behavior goal and were taking steps to revise the behavioral supports required to meet the student's needs. Over the course of the 2017-18 school year, the student made progress towards and achieved the behavior goal. The May 3, 2018 IEP was appropriately developed by the IEP team and reflects that the student's behavior no longer impedes his

learning or the learning of others and no longer requires individualized behavioral supports.

4. Prior to the beginning of the 2018-19 school year, USD #___ shall review and revise as necessary procedures and practices for ensuring that IEPs are implemented as written and that any changes to the IEP will be made by the IEP Team at an IEP Team meeting or through the amendment process. USD #___ will provide training on these procedures and practices to all special education case managers no later than the first day of the 2018-19 school year. Documentation of this review and training will be provided to Early Childhood, Special Education and Title Services no later than August 30, 2018.

5. Further, USD #___ within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON APRIL 13, 2018

DATE OF REPORT: MAY 12, 2018

This report is in response to a complaint filed with our office by ____ on behalf of his daughter, _____. In the remainder of this report, ____ will be referred to as "the student" while ____ will be referred to as "the father." The complaint was received on April 13, 2018. The Kansas Department of Education allows for a 30 day timeline to investigate the child complaint which ends on May 13, 2018.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ staff by telephone on May 1 and May 9, 2018. USD #___ made the following staff person available as part of the investigation process:

- G, Director of Special Education

The Complaint Investigator also spoke to the father by telephone on April 23, 2018 and exchanged emails with him on May 2, 2018 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Copy of the student's grade card for the 2017-18 school year dated March 6, 2018
- Notice of Meeting scheduling an IEP team meeting for the student on April 2, 2018
- Copy of the student's attendance record for the 2017-18 school year dated April 23, 2018
- Copy of the Attendance Policy C-1 for USD #___
- Copy of the student's IEP dated September 14, 2017

- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 14, 2017
- IEP Meeting Attendance Signature Page dated April 2, 2018
- PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 2, 2018
- Letter of Medical Necessity for the student from Dr. Brad Olney dated September 22, 2014
- Letter of Medical Necessity for the student from Dr. Brad Olney dated January 27, 2016
- Parent Consent and Waiver for Child to be Exempt from Compulsory Attendance Requirements signed by the student's mother on April 30, 2018
- Revocation of Consent for All Special Education and Related Services signed by the student's mother and dated April 30, 2018
- PWN for Termination of All Special Education services, Related Services, and Supplementary Aides and Services Due to Parent's Revocation of Consent dated April 30, 2018
- Copy of Certified Mail Receipt showing the PWN dated April 30, 2018 was mailed on May 1 and received by the father on May 3, 2018
- Letter of response on behalf of USD #___ and the ____ County Special Education Cooperative dated May 8, 2018 written by Donna Whiteman from the Kansas Association of School Boards
- Email correspondence written by the father to the investigator dated May 2, 2019

Background Information

This investigation involves a 13 year-old girl who is enrolled as a seventh grade student at _____ Junior / Senior High School in USD #___. Records show the student is eligible for special education and related services due to meeting the criteria for exceptionality in the areas of Orthopedic Impairment due to a medical diagnosis Charot-Maire-Tooth and a Learning Disability in all areas of Math. The student's most recent IEP was developed on September 14, 2017. The parents of the student are divorced but both remain educational decision makers for the student.

Issues

The complainant raised one issue which was investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegation in this complaint covers the time period during the 2017-18 school year.

> **ISSUE ONE:** The USD #___ (_____ Public Schools) and the _____ County Special Education Cooperative, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to the parent's request for a change of services and placement at an IEP meeting held in April 2018.

Findings:

The father believes that USD #___ is allowing the student to continue to get further and further behind by not addressing the concerns with frequent absences. He expressed concerns that USD #___ does not consider parent input and has not communicated clearly with him in regards to the decisions made about the special education program for his daughter. He indicated that he was not provided with information about decisions prior to their implementation.

Interviews and documentation found the father requested an IEP team meeting to discuss concerns with failing grades after the student was ineligible to participate in a dance held on March 12, 2018. A Notice of Meeting was provided to both parents on March 13, 2018 scheduling an IEP meeting for April 2, 2018.

Documentation shows that both parents were in attendance at this IEP team meeting. The IEP team discussed the student's absences and academic progress. The current IEP dated September 14, 2017 as well as letters written in 2014 and 2016 from Dr. Brad Olney, the student's medical doctor, were reviewed. The letters documented reduced strength and endurance as a result of her diagnosis of Charot-Maire-Tooth, a progressive neurological disorder affecting muscles and peripheral nerves, and recommended a number of accommodations as "medical necessities." The father indicated the student has been absent frequently during second semester this school year as a result of increased pain and stiffness which make it difficult for her to get up and arrive at

school on time. The father proposed having the student attend a shortened school day but reported USD #___ only wanted to provide the student with stretching exercises to do at home.

A PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 2, 2018 was mailed to both parents on April 4, 2018. The explanation of the action refused, reason for the refusal and data used to make the decision showed that the student failed social studies third quarter and was currently failing her English and science classes. During second semester, the student had been absent 31 days during first hour; 19 days during second and fifth hours; and 20 days during third, fourth, sixth, and seventh hours. The parents indicated her absences were due to difficulty getting out of bed in the morning due to pain. The teachers indicated that the student does well academically when she is in attendance; however, due to frequent absences, she falls behind and has difficulty getting caught up with assignments. The parent believed the student should not be receiving failing grades because of the IEP. After a review of the Medical Necessity reports and the services and accommodations/modification on the current IEP, the IEP team determined that the current IEP reflected all of the accommodations described in the current medical reports. The IEP team considered the possibility of a shortened day due to the student's pain when attempting to get out of bed in the morning but wanted to allow the physical therapist the opportunity to provide a home stretching program for the student in order to address the pain issues in the morning. Additional medical information would be needed in order to reconsider a shortened school day and the parents indicated they would get a more current letter from the medical specialist. The PWN indicated that no change of placement was needed at this time. The PWN also included a statement that the parents of a student with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained as well as sources for parents to contact to obtain assistance in understanding their procedural safeguards.

The father indicated that he does not remember receiving a copy of this PWN. However, a copy of the front page of the PWN was included in the documentation he submitted with the complaint to the Kansas Department of Education on April 13, 2018.

On April 19, 2018, Ms. G contacted the father to follow-up on the letter from the medical specialist. The father reported the student was seen by the medical

specialist on April 16, 2018 and was in the process of preparing a letter with recommendations.

On April 23, 2018, the student's mother called the school principal and notified him that she had enrolled the student in an online education program and was withdrawing the student from _____ Junior / Senior High School in USD #___.

The father reported that the school contacted him on April 24, 2018 regarding the student being absent from school. He indicated he only learned that student had been withdrawn from school to be homeschooled using an online program after he contacted the mother.

On April 30, 2018, the student's mother came to the school and met with Chad Kenworthy, Principal, to participate in the final counseling session regarding withdrawing the student from school. The Parent Consent and Waiver for Child to be Exempt from Compulsory Attendance Requirements was signed by the mother and Mr. Kenworthy on that same date and indicated the student was being homeschooled using an online program.

On that same date, the mother provided a signed Revocation of Consent for All Special Education and Related Services for the student to Ms.G. This form indicates the mother is the educational decision maker and that she is revoking consent effective April 30, 2018. The form states *"I understand that by revoking consent for all special education and related services, the school district, **after providing me with prior written notice of the termination of services**, must discontinue all special education and related services to the student . . ."*

Documentation shows the mother was personally presented with a PWN for Termination of All Special Education services, Related Services, and Supplementary Aides and Services Due to Parent's Revocation of Consent by Ms. G on April 30, 2018. The description of the action proposed states that all special education services, related services and supplementary aids and services described in the student's IEP will cease on April 30, 2018. The PWN indicates that no other options were considered as this decision was not made by the IEP team but instead is a result of a unilateral decision of the student's educational decision maker to revoke consent as authorized by special education regulations.

Documentation shows the father was also provided with a copy of this same PWN for Termination of All Special Education services, Related Services, and

Supplementary Aides and Services Due to Parent's Revocation of Consent by Ms. G via certified mail on May 1, 2018. Documentation shows the father signed for the certified letter on May 3, 2018.

The father indicated that, although he was not informed of the changes in the student's educational program by the school in a timely manner, he was generally pleased with the student's online education program and that this model had significantly decreased the student's stress and anxiety about school and appeared to be working well in regards to the student's pain and attendance issues.

State and federal regulations, at K.A.R. 91-40-26 and 34 C.F.R. 300.503, requires that written notice must be given to parents a reasonable time before the responsible public agency proposes to initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The written notice sent to parents by the responsible public agency must contain the following: (1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action; (3) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal; (4) a statement that the parents of a student with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding their procedural safeguards; (6) a description of other options that the IEP Team considered and the reasons why those options were rejected; and, (7) a description of other factors that are relevant to the agency's proposal or refusal.

State and federal regulations, at K.A.R. 91-40-27 and 34 C.F.R. 300.300(b)(4)(i), state that a parent may unilaterally withdraw a student from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to his/her child. A public agency may not, through mediation or a due process hearing, challenge the parent's decision or seek a ruling that special education and related services must continue to be provided to the student. Parental revocation of consent must be in writing. Upon receipt of the parent's written revocation of consent, a public agency: (1) must provide the parent with prior written notice before ceasing the provision of special education and related services; (2) will not be considered in

violation of requirement to make FAPE available to the student because of the failure to provide the student with special education and related services; (3) is not required to convene an IEP team meeting or develop an IEP for the student; (4) is not required to amend the student's education records to remove any references to the student's receipt of special education and related services.

The Office of Special Education Programs (OSEP) further clarified requirements with regards to parental revocation of consent for special education services in Letter to Ward (8/31/2010). The letter stated "*Once the parent of a child revokes consent in writing for the child's continued receipt of special education and related services, the public agency may not continue providing special education and related services to the child, but must provide prior written notice to both parents. Under Part B, any person who meets the definition of the term "parent" in 34 CFR §300.30(a) with legal authority to make educational decisions on behalf of the child has the right to revoke consent in writing to the child's continued receipt of special education and related services any time subsequent to the initial provision of special education and related services. There is no requirement in Part B that the public agency obtain consent for the initial provision of special education and related services, or accept revocation of consent for the child's continued receipt of special education and related services, from both parents with legal authority to make educational decisions on behalf of the child*."

In this case, an IEP team meeting was held on April 2, 2018 and the father of the student requested a change of placement for a shortened school day. A PWN dated April 2, 2018 was provided to both parents via mail on April 4, 2018 explaining that the shortened day attendance had been rejected and describing the rationale for that decision. Subsequently, the student was withdrawn from school to be homeschooled through an online program by the mother on April 23, 2018. The father did not learn of this change of placement until the following day when he contacted the mother due to being notified the student was absent from school. On April 30, the mother revoked consent for all special education services in writing and was personally presented with a PWN dated the same date explaining that all special education services would cease as of April 30, 2018. A copy of this same PWN was provided to the father via certified mail on May 1, 2018. Documentation showed the father signed for this document on May 3, 2018. While the father was notified of the change of placement after the fact, there is no requirement for the public agency to obtain consent from the father for any change of placement prior to implementation because the mother

also has educational decision making rights and provided consent to USD #___ for the changes.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to providing appropriate PWN to the parents of the student when refusing a parent request for change of placement and for a parental revocation of consent for special education services is not substantiated.

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____
Nancy Thomas
Complaint Investigator

(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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools: 18FC___-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on April 13, 2018, by _____ on behalf of his daughter, _____. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, an Initial Report, addressing the allegations, was issued on May 12, 2018. That report concluded that there were no violations of special education statues and regulations

Thereafter, on May 22, 2018, Mr. _____, who will be referred to in the rest of this decision as the father, filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the report, the parent's notice of appeal, the district's written response, and information contained in the complaint file at the Kansas State Department of Education (KSDE). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

PRELIMINARY MATTERS

The Appeal Committee will limit its inquiry to the issue presented in the appeal. No new issues will be decided by the Appeal Committee. The appeal process is a review of the Initial Report. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Initial Report.

DISCUSSION OF ISSUES ON APPEAL

The complaint involved one issue. After requesting an IEP meeting to discuss concerns about his daughter's absences from school and resulting failing grades, the team provided the father with a Prior Written Notice (PWN) stating that it refused the father's request for changes to the student's IEP. The investigator framed the issue as failing "to appropriately respond to the parent's request for a change of services and placement at an IEP meeting held in April 2018." Information presented in the report documents that the meeting in question was held on April 2, 2018.

The Complaint Report stated that documentation showed both parents attended the April 2, 2018, IEP meeting (page 3 of the Report). At the meeting the father proposed a shortened school day to address the student's difficulty in getting out of bed in the morning due to pain. The team considered this proposal, but rejected it to allow the physical therapist an opportunity to first provide a home stretching program to address the pain the student was experiencing in the

morning, and to get additional medical information from the student's doctor. As a result of this decision, the team gave the father a PWN stating that it was refusing the father's request for a shortened school-day (page 4 of report).

The Committee has reviewed the PWN provided to both parents on April 2, 2018. That notice describes the issue being discussed at the meeting, the parent's concerns, the review of medical letters from the child's physician, the physician's recommendations, teacher's input on the student's performance in class, the reasons for refusing the parent's requests, the options considered, why the options were rejected, and the data used for refusing the proposed action.

In his appeal, the father criticizes only portions of the Report that are related to the mother's activity on April 30. The father alleges that the PWN, dated April 30, 2018, regarding the revocation of consent, indicated no other options were considered (which the Committee believes was correct because the revocation of consent by the mother on that date was not a decision of the IEP team). The father states in his appeal, however, that he disputes that statement because he was having continuing discussions regarding other options with the director of special education after the April 2 IEP meeting.

The problem with the father's appeal is that he is appealing events discussed in the report that occurred after he filed his complaint. He filed his complaint on April 13 to contest the events that took place at the April 2 IEP meeting. The investigator found that the team adequately considered the parent's concerns at that meeting and provided an adequate PWN. On appeal, the father presents no evidence to indicate that there was an incorrect conclusion by the investigator regarding the April 2 meeting. In addition, in his letter of appeal, the father states that he had no notice of the meeting on April 30, school personnel put pressure on the mother to revoke consent, and the mother's motivation for revoking consent was improper.

The investigator's report, however, describes the activity on April 30 in the report only as an update to actions that were taken subsequent to the filing of this complaint. Those subsequent actions had no apparent effect with regard to the investigator's conclusion that the district appropriately considered the concerns of the father at the April 2 IEP meeting, and provided a proper PWN regarding the team's decision. The IEP team did not agree with the father, but the law does not require the IEP team to agree with proposals made by a parent. The law only requires the IEP team to consider the concerns of the parent and to permit the parent to have a legitimate opportunity to participate in the decision. The Committee finds that this IEP team did consider the concerns of the parent and did permit the parent to have a legitimate opportunity to participate in the decision making process. Therefore, the Committee concludes that there is sufficient evidence to support the findings and conclusions in the Initial Report.

CONCLUSION

All findings and conclusions in the original report are sustained.

This is the final decision on this matter, there is no further appeal. This final decision is issued this 7th day of June, 2018.

APPEAL COMMITTEE:

Kerry Haag

Laura Jurgensen

Stacie Martin

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON MAY 11, 2018

DATE OF REPORT: JUNE 9, 2018

This report is in response to a complaint filed with our office by ____ on behalf of her son, _____. In the remainder of this report, ____ will be referred to as "the student" and _____ will be referred to as "the parent." The complaint was received on May 11, 2018. The Kansas Department of Education allows for a 30 day timeline to investigate the child complaint which ends on June 10, 2018.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed USD #___ staff by telephone on June 5, 2018. USD #___ made the following staff persons available as part of the investigation process:

- M1, Special Education Coordinator
- E, Special Education Coordinator
- C, Principal
- M2, Director of Special Education
- Rob Turner, Attorney for USD #___

The Complaint Investigator interviewed the complainant and the family's educational advocates by telephone on May 31, 2018 as part of the investigation process. The following persons were interviewed:

- Parent
- _____, Advocate from Dyslexia Help KC
- _____, Advocate

In completing this investigation, the Complaint Investigator reviewed the following material:

- USD #___ response letter written by Greg Goheen, Attorney, on May 31, 2018
- Evaluation Summary Report for the student dated February 23, 2017

- Individualized Education Program (IEP) for the student dated February 16, 2018
- Notice of Meeting (NOM) dated January 22, 2018 scheduling an IEP Team meeting on February 16, 2018
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated February 16, 2018
- PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated February 26, 2018
- Notification of the Destruction of Special Education Records signed by the parent on February 16, 2018
- Meeting notes from the April 18, 2018 IEP Team meeting kept by the parent
- Test instructions and test protocol for the Phonological Awareness Skills Test (PAST)
- Test instructions and test protocol for the CORE Phonics Survey
- Test instructions and test protocol for the CORE Vocabulary Screener
- Email dated March 16, 2018 from the parent to E, Special Education Coordinator, requesting an Assistive Technology (AT) evaluation
- PWN for Evaluation or Reevaluation and Request for Consent signed by the parent on March 23, 2018
- Meeting to Review Data dated April 18, 2018
- Assistive Technology Team Report dated April 27, 2018
- Copies of data sheets collected as part of the AT evaluation
- Email dated April 27, 2018 from P, Speech Language Pathologist, to the parent
- IEP team meeting notes from the May 9, 2018 IEP Team meeting kept by the parent
- IEP for the student dated February 23, 2017
- IEP Goal Progress Report dated February 14, 2018

Background Information

This investigation involves a nine year-old boy who was enrolled in the fourth grade at ____ Elementary School in USD #___ during the 2017-18 school year. Records indicate the student received Infant Toddler Services (ITS) for speech/language delays beginning at age 18 months. The student was initially evaluated and found eligible for special education and related services at age

three due to a global developmental delay. The student has had an individualized education program (IEP) since that time.

Issues

The complainant raised six issues which were investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegations in this complaint cover the time period beginning May 11, 2017 through the present time.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures for excusal of IEP team members, specifically the classroom teacher from the February 16, 2018 IEP team meeting.

Findings:

Federal regulations, at 34 C.F.R. 300.321, require public agencies to ensure that the IEP Team for each child with a disability includes: the parents of the child; not less than one regular education teacher of the child (if the child is or may be participating in the regular education environment); not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child; a representative of the public agency who is qualified to provide or supervise the provisions of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency and able to commit the resources of the agency; and an individual who can interpret the instructional implications of evaluation results.

Federal regulations, at 34 C.F.R. 300.321(e), allow for a required IEP Team member to be excused from an IEP Team meeting in two specific circumstances following appropriate procedures. A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the

meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, in writing, and the public agency consent to the excusal, and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

The parent reports A, the student's fourth grade general education teacher, attended the February 16, 2018 IEP Team meeting but then left about halfway through and then returned towards the end of the meeting. The parent indicated she did not provide consent for Ms. A to be excused from the meeting. The parent believes Ms. A should have provided input during the entirety of the IEP Team meeting as the student spends the majority of the school day in the general education setting.

Documentation and interviews found an IEP Team meeting was held for the student on February 16, 2018. The NOM dated January 22, 2018 lists the purposes of the meeting as to conduct an annual review of the student's IEP and to discuss possible changes in the student's IEP. The IEP Team meeting began approximately 9:00 a.m. and ended at approximately 11:30 a.m. The IEP participant signature page shows the student's classroom teacher, Ms. A was in attendance at the meeting. There is no form showing the parent and USD #___ agreed for Ms. A to be excused in part from this IEP Team meeting.

USD #___ reported the IEP Team meeting was held the same day as parent/teacher conferences. Ms. A attended the IEP Team meeting until 10:00 a.m. when she left to attend another scheduled parent/teacher conference. Ms. A returned to the IEP Team meeting at approximately 10:45 a.m. "*to answer additional questions*" and stayed until the conclusion of the meeting. USD #___ acknowledged the general education teacher did not attend the entire IEP team meeting on February 16, 2018 and that no consent for the excusal was obtained from the parent but believes that no consent for excusal was required because her area of the curriculum and service was not being discussed while she was away from the meeting. USD #___ also believes the IEP development process was effective because the parent ultimately provided consent for the changes proposed in the IEP developed at the February 16, 2018 IEP Team meeting.

The IDEA regulations are clear that the parent and the public agency must agree to excuse a required member of the IEP team in writing regardless of whether their area of the curriculum or services are being discussed.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to noncompliance with this requirement is substantiated.

ISSUE TWO: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to include Orton Gillingham in the student's IEP developed on February 16, 2018.

Findings:

Federal regulations, at 34 C.F.R. 300.320 require school districts to develop an individualized education program (IEP) for each student identified as having a disability and in need of special education and related services. The IEP must include (1) a statement of the student's present levels of academic and functional performance, (2) measurable annual goals, (3) a description of how progress will be measured, (4) a statement of educational and related services based on peer reviewed research to the extent practicable to be provided to the child or on behalf of the child (5) an explanation of the extent to which the student will not be in the regular classroom, (6) a statement of accommodations necessary to measure achievement, and (7) the date on which services will commence.

Federal regulations, at 34 C.F.R. 300.322, require public agencies to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate in the IEP team meeting.

The findings from Issue One are incorporated herein by reference.

The parent indicated the student's IEP goals were developed to increase reading and writing skills. During the IEP Team meeting, the parent requested that the student's reading program be based on the Orton Gillingham method of instruction. The parent reported that M1, Special Education Coordinator, refused this specific service stating it was not available at ____ Elementary School. Ms. M1 then indicated she was unaware if this type of structured reading program was available anywhere in the district. The parent stated that C, Principal, offered to write a grant to purchase this curriculum and to train a teacher in its implementation.

The IEP developed at the February 16, 2018 IEP Team meeting includes a statement of the student's present levels of academic and functional performance. The present level describes the student's reading and writing skills as "*falling at the beginning of the first grade level*." Other areas of concern include receptive communication e.g. "*when stories or topics are presented, needs pictures/strategies to help with comprehension, memory, vocabulary*."

The present level documents that the student has been diagnosed with the following medical concerns: dyslexia, sensory integration, mixed receptive/expressive language disorder, Attention Deficit Hyperactivity Disorder (ADHD), moderate phonological awareness deficit, severe phonological memory deficit, mild rapid naming deficit, phonological disorder, asthma, and avoidant/restrictive food intake disorder.

The present level also documents the parent's input for special education needs as follows:

> *Mom has requested a structure reading program called Orton Gillingham. She also wants him to increase his reading level from an F to an L. She also requested he be able to use voice to text to increase his independence.*

The IEP was found to include four measurable annual goals to address reading decoding, written expression, and reading comprehension. Each annual goal included a description of how progress towards these annual goals would be measured. The IEP indicates the student will receive specialized instruction in the special education setting for 300 minutes per week, specialized instruction in the general education setting for 120 minutes per week, and speech language services for 40 minutes per week beginning February 19, 2018 and ending February 15, 2019. The IEP includes accommodations for reading and feeding to be provided in both the general education and special education settings.

Documentation and interviews found that USD #___ did provide the parent the opportunity to participate in the development of the student's IEP dated February 16, 2018. The IEP developed includes all of the required components as described in 34. C.F.R. 300.320. There is no requirement that the IEP include the specific methodology or program that will be used to educate the child with a disability while receiving special education and related services described in the IEP. Based on the foregoing, the allegation related to 34 C.F.R. 300.320 is not substantiated.

> **ISSUE THREE:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures for destruction of records, specifically by destroying protocols of assessments administered to the students in S's classroom during the past 12 months.

Findings:

Federal regulations, at 34 C.F.R. 300.32, define “personally identifiable” as information that contains the name of the child. Federal regulations, at 34 C.F.R. 300.611, define “Educational records” as records maintained by a public agency responsible for the provision of general education or special education and related services that pertain to the special education and related services provided to a student with a disability. The term includes test instruments or protocols/score sheets and a record of the test results.

Federal regulations, at 34 C.F.R. 300.624 require public agencies to inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to his/her child.

USD #___ provided the parent with the district policy for destruction of special education records on February 16, 2018. This policy states “*Special Education records for each child with an exceptionality are maintained by the School District until no longer needed to provide educational services to the child. This notice is to inform you that the special education records for this student will be destroyed after seven (7) years following termination of special education services due to the transfer to another school, program completion, or graduation from high school unless the student (or student’s legal guardian) has taken possession of the records prior to that time.”*

The parent reported that records used to develop the February 16, 2018 IEP were destroyed and not available for review. The parent and her advocates indicated they requested to inspect and analyze the test protocols related to reading and writing described in the present level at the April 18, 2018 IEP Team meeting. However, S, Special Education Teacher, reported she shredded these items after the February 16, 2018 IEP was agreed upon by the parent. The parent stated she was not notified prior to this documentation being destroyed. The parent also reported that Ms. S indicated this was her standard practice following the IEP meetings for all students on her case load.

The present level of the February 16, 2018 IEP describes assessment results from three tests administered to the student by Ms. S as follows:

- The Phonological Awareness Skills Test (PAST) is an informal individually administered diagnostic assessment focusing on phonological skills which is used to inform instruction. The scores are reported in the present level

by listing a skill area and the number of items correct out of the total number of items attempted e.g. “Rhyme recognition 4/6”.

- The CORE Phonics Survey is an informal individually administered diagnostic assessment focusing phonemic awareness skills which is used to inform instruction. The scores are reported in the present level by listing a skill area and the number of items correct out of the total number of items attempted e.g. “Short vowels in CVC words 6/10”.

- The CORE Vocabulary Screener is an informally administered diagnostic assessment focusing on grade level vocabulary. The screener is designed to have a student silently read isolated words and chose a synonym from three choices. It is noted that in this case the screener was read aloud to the student to obtain a measure of listening comprehension. The scores are reported in the present level by listing the grade level and form administered and the total number correct out of the total number of items administered e.g. “26/30 on form 1A”.

USD #___ reported that Ms. S administered these assessments in preparation for the student’s February 16, 2018 IEP Team meeting. To perform these assessments, Ms. S observed and made notes on how the student performed in response to each of the prompts provided during each assessment. Based upon her observations, Ms. S would then score each assessment. USD #___ reported that Ms. S had the written observation notes at the February 16, 2018 IEP Team meeting and that the results were shared and recorded into the present level of the IEP. USD #___ believes that these “observation notes” are not considered educational records and do not have to be maintained once the scores are recorded in the IEP.

USD #___ reported that Ms. S has been employed with the school district for several years. She served as the case manager for at least 23 students during the 2017-18 school year.

In this case, it is clear that the results of the three assessments administered by Ms. S were used in order to determine educational services provided to the student. The “observation notes” described by USD #___ are in reality the test protocols provided by the test publisher. As such, these records are considered educational records and do contain personally identifiable information. IDEA has clear procedures that must be followed when educational records containing personally identifiable information are destroyed as described in 34 C.F.R. 300.624 and USD #___’s own policy. Based on the foregoing, the allegation of a

violation of special education laws and regulations related to noncompliance with this requirement is substantiated.

ISSUE FOUR: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to conduct an Assistive Technology (AT) evaluation for the student during the 2017-18 school year, specifically by not providing an appropriate reevaluation report to the parent and not conducting the AT evaluation by qualified personnel.

Findings:

Federal regulations, at 34 C.F.R. 300.15, state that the term "evaluation" means procedures used in accordance with 34 C.F.R. 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

Federal regulations, at 34 C.F.R. 300.304 require that assessments and other evaluation materials used to assess a child are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

Federal regulations, at 34 C.F.R. 300.306(a), require that upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determines whether the child is a child with a disability and the educational needs of the child; and that the public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

The parent reported the Assistive Technology (AT) evaluation conducted by USD #___ provided insufficient support for a child with the level of severity in the identified areas of delays, failed to assess for all medical diagnoses, and provided only minimal opportunity to close the achievement gap and access grade level materials. The parent believes P, Speech Language Pathologist (SLP), has little or no experience in conducting AT evaluations.

Documentation and interviews found the most recent comprehensive reevaluation was completed on February 23, 2017. At that time the student was determined eligible for special education and related services under the

exceptionality categories of learning disability and speech or language impairment.

The parent requested an AT evaluation via email on March 16, 2018 and USD #___ responded to this request by providing the parent with PWN for a reevaluation in this area. The parent signed consent for this reevaluation on March 23, 2018.

Documentation shows that Ms. P coordinated the AT evaluation which was based on the Student, Environment, Task and Tools (SETT) model and the Wisconsin Assistive Technology Initiative (WATI). A team approach to the AT is recommended by WATI. Depending upon the child's disabilities and the area of concern, WATI recommends the team might include the following persons as members:

- Someone familiar with the student such as the parent
- Someone familiar with student performance such as the special education teacher
- Someone familiar with language skills such as an SLP
- Someone familiar with motor skills such as an Occupational Therapist (OT)

Documentation shows the AT team met to review the AT data on April 18, 2018 with the following persons in attendance: Ms.P ; D, SLP; S2, Special Education Teacher; and a Para Educator named Natalie.

The AT Team Report was dated April 27, 2018 and describes a three week trial of speech to text software, window guide cards for completing worksheets, and lined paper to address concerns with the mechanics of writing. The report concludes with the Assistive technology team recommendations for the IEP team to consider. A copy of the report was emailed to the parent on April 27, 2018 by Ms.P. Documentation shows this report and those recommendations were discussed at the May 9, 2018 IEP team meeting.

USD #___ provided documentation to show that Ms. P is a speech language pathologist who holds a graduate degree from the University of Kansas. Ms. P holds licensure as a speech language pathologist in the state of Kansas. Ms. P has also holds a Certificate of Clinical Competence from the American Speech Language and Hearing Association (ASHA).

It is noted that Kansas has no credentialing requirements or personnel standards for persons to conduct an AT evaluation.

In this case, it appears that Ms. P meets the requirements to be considered trained and knowledgeable to conduct an AT evaluation as recommended by WATI. There is also documentation to show the parent did receive a copy of the AT evaluation report.

However, there is no documentation to show that a group of qualified professionals and the parent of the child determined whether the child is a child with a disability and the educational needs of the child upon completion of the reevaluation to which the parent consented on March 23, 2018. Documentation shows that only the AT Team consisting of school personnel determined the educational needs of the child based on recommendations for the IEP Team to consider included in the Assistive Evaluation Summary Report dated April 27, 2018. There is no documentation to show that eligibility was discussed and determined considering this additional assessment information. Based on the foregoing, the allegation of a violation of special education laws and regulations related to noncompliance with 34 C.F.R. 300.306(a) is substantiated.

> **ISSUE FIVE:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to ensure that special education teachers are appropriately and adequately prepared to provide special education services to students with disabilities during the 2017-18 school year.

Findings:

Federal regulations, at 34 C.F.R. 300.156(a), require public agencies to ensure that children with disabilities are provided special education and related services by appropriately and adequately prepared and trained personnel who have the content knowledge and skills to serve children with disabilities.

Federal regulations, at 34 C.F.R. 300.156(c), requires that each special education teacher providing special education services 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, and holds at least a bachelor's degree.

Federal regulations, at 34 C.F.R. 300.320(a)(4), require the IEP to include a statement of supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; be involved in and make progress in the general education curriculum; participate in extracurricular and other nonacademic activities; and, be educated and participate with other children with disabilities and nondisabled children.

The parent believes that the special education teachers who work with the student are not properly trained in techniques to effectively educate her son.

Documentation and interviews found that the student received special education instruction from two special education teachers during the 2017-18 school year. From the first day of school attendance in August until the end of September, S2 served as the special education teacher for the student. Ms. S was the student's special education teacher from the end of September until March 2018 when Ms. S2 again was assigned as the special education teacher for the student. Ms. S2 continued as the student's special education teacher until the end of the 2017-18 school year in May.

USD #___ reported that Ms. S2 has both a masters and bachelor's degree and is licensed by the state of Kansas in Adaptive Special Education for grades kindergarten through sixth grade. Ms. S2 has logged over 364 hours of professional development and training over the past five school years.

USD #___ reported that Ms. S also has both a masters and bachelor's degree and is licensed by the state of Kansas in High Incidence Special Education for grades kindergarten through sixth grade. Ms. S has logged over 127 hours of professional development and training over the past three school years.

It appears that both Ms. S and Ms. S2 meet the standards to be considered trained and knowledgeable to provide special education services to students with disabilities.

Documentation found that two IEPs have been in effect during the 2017-18 school year. Both the IEP dated February 16, 2018 and the IEP dated February 23, 2017 state that no special training or support must be provided to school personnel.

Based on the foregoing, the allegation related to personnel working with the student not being appropriately and adequately prepared and trained in content knowledge and skills necessary to serve children with disabilities is not substantiated.

ISSUE SIX: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to provide a free appropriate public education (FAPE) to the student, specifically by not developing an individualized educational program (IEP) for the student that was reasonably calculated to provide educational benefit during the past 12 months.

Findings:

Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education (FAPE) available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, defines the term "free appropriate public education" as providing special education and related services at no charge to the parent, under the supervision of the public agency, and in in conformity with an IEP that was designed to meet the unique needs of the child and to confer educational benefit to the child.

The term “appropriate” was further clarified under the Supreme Court decision in the Endrew F. v. Douglas County School District Re-1, 137 S. Ct. 988. The Court held that to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. In further clarifying the standard, the Court rejected the “merely more than de minimis” (i.e. more than trivial) standard applied by the Tenth Circuit Court. In determining the scope of FAPE, the Supreme Court reinforced the requirement that “every child should have the chance to meet challenging objectives.”

The “reasonably calculated” standard recognizes that developing an appropriate IEP requires a prospective judgment by the IEP Team. Generally, this means that school personnel will make decisions that are informed by their own expertise, the progress of the child, the child’s potential for growth, and the views of the child’s parents. IEP Team members should consider how special education and related services, if any, have been provided to the child in the past, including the effectiveness of specific instructional strategies and supports and services with the student. In determining whether an IEP is reasonably

calculated to enable a child to make progress, the IEP Team should consider the child's previous rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with the child's progress, and additional information and input provided by the child's parents. As stated by the Court, "any review of an IEP must consider whether the IEP is reasonably calculated to ensure such progress, not whether it would be considered ideal.

The parent believes the student has made little to no progress in the areas of reading and writing. The parent notes the student has received special education and related services since the age of three and has been promoted from grade to grade. The student will be enrolled in the fifth grade at the beginning of the 2018-19 school year but continues to read and write at the beginning first grade level despite six years of special education and related services.

The findings in Issue Two and Issue Five are incorporated herein by reference.

A comparison of the February 23, 2017 IEP and February 16, 2018 IEP found:

- The student had progressed from reading at level D to reading at Level F; it is noted that same grade peers were also expected to progress two reading levels from reading at level O at the end of third grade to reading at level Q in the middle of fourth grade.

- The student made similar progress in the area of writing. His current writing skills are described as similar to his reading level and both IEPs noted that "*his writing is not as involved or detailed as grade level expectations which makes it difficult for him to do grade level writing tasks*."

- During the 2016-17 school year, the student received 150 minutes per week of specialized instruction in the general education setting and 150 minutes per week of specialized instruction in the special education setting. During the 2017-18 school year, the student services were changed and increased to 120 minutes per week of specialized instruction in the general education setting, 300 minutes per week in the special education setting, and 40 minutes per week of speech language services.

- Both IEPs reflect the parent provided input into the development of the present level of performance, the goals, the accommodations, the special education services and the student's placement.

- There were two goals on the February 23, 2017 IEP. One goal addressed reading decoding of words involving vowel digraphs, and diphthongs in isolation and in text. The second goal addressed written expression by him being able to write a story with prompts that had a beginning, middle and end using complete sentences.

- The IEP Goal Progress Report dated February 14, 2018 showed the student had met the written expression goal and had made progress towards the reading goal but had not met the goal with 70% accuracy. The student was demonstrating 60% accuracy up from a baseline of 27% accuracy.

- The February 16, 2018 IEP includes two reading goals and two writing goals. One or the reading goals is to decode words with a variety of vowel patterns, consonant blends, and r-controlled vowels. USD #___ reports this would increase the student's reading level from level F to level J which is an increase of four levels or double the progress noted from the previous IEP. The second reading goal involves answering comprehension and critical thinking questions. The first writing goal address him being able to write a story without prompts that had a beginning, middle and end using complete sentences. The second writing goal involves using correct spelling, capitalization, and punctuation in his written work.

In this case, it appears USD #___ has developed an IEP that is reasonably calculated to enable the student to make progress appropriate in light of the child's circumstances and have the chance to meet challenging objectives. Based on the foregoing, the allegation of a violation of 34 C.F.R. 300.101 is not substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on the issue presented in this complaint. Violations have occurred in the following areas:

1. State and federal regulations, at 34 C.F.R. 300.321(e), require that public agencies obtain consent to excuse any required IEP Team member, in whole or in part, from an IEP Team meeting. When the member's attendance is not necessary because the member's area of the curriculum or related services is not being discussed or modified, only written agreement between the public agency and the parent is required. When the meeting involves a modification to or discussion of the member's area of the curriculum or related services, the parent and the public agency must consent to the excusal in writing and the member must submits input into the development of the IEP in writing to the parent and the IEP Team prior to the meeting.

   In this case, USD #___ failed to obtain written consent from the parent to excuse the general education teacher from part of the IEP team meeting held on February 16, 2018.

2. Federal regulations, at 34 C.F.R. 300.624 require public agencies to inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to his/her child. The information must be destroyed at the request of the parent subject to the federal requirement that records be maintained for a minimum of three (3) years from the date the child no longer receives special education and related services.

   In this case, USD #___ destroyed educational records related to the administration of the PAST, the CORE Phonics Awareness Survey, and the CORE Vocabulary Screener for not only the student but also for all student's on Ms.S's caseload during the past 12 months.

3. Federal regulations, at 34 C.F.R. 300.306(a), require that a group of qualified professionals and the parent of the child determines whether the child is a child with a disability and the educational

needs of the child upon completion of the administration of assessments and other evaluation measures.

In this case, USD #___ only included school personnel in reviewing the data collected during the AT evaluation and in determining the recommendations for the IEP team to consider. There is no documentation to show that the parent was involved in the determination of whether the child was a child with a disability and the educational needs of the child following the completion of the AT evaluation on April 27, 2018 or at the IEP Team meeting on May 9, 2018..

Based on the foregoing, USD #___ is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:

    a) Comply with federal regulations, at 34 C.F.R. 300. 300.321(e), which require that public agencies obtain consent to excuse any required IEP Team member, in whole or in part, from an IEP Team meeting and to follow appropriate procedures to obtain input in writing from the excused IEP Team member, if required

    b) Comply with federal regulations, at 34 C.F.R. 300.624, which require public agencies to inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to his/her child.

    c) Comply with federal regulations, at 34 C.F.R. 300.306(a), which require that a group of qualified professionals and the parent of the child determines whether the child is a child with a disability and the educational needs of the child upon completion of the administration of assessments and other evaluation measures.

2. Prior to the first day of attendance for students in the 2018-19 school year, USD #___ shall review procedures and practices related to the excusal of required IEP Team members and destruction of records. USD #___ will make any changes as necessary. If changes are made, a copy of these updates will be provided to Early Childhood, Special Education and Title

Services and documentation showing these updates have been shared with all administrative and teaching staff members in USD #___ shall be provided no later than August 30, 2018.

3. In addition, training will be provided to all administrative and teaching school staff members at ____ Elementary School on procedures and practices related to the excusal of required IEP Team members and the destruction of records. This training will be provided by a person approved by the Early Childhood, Special Education and Title Services. Documentation of the content of the training and who attended the training will be provided to Early Childhood, Special Education and Title Services no later than August 30, 2018.

4. It is noted that individual correction for 34 C.F.R. 300.624 is not ordered as USD #___ has already informed the parent retroactively of the destruction of the records, re-administered those assessments to the student, and shared those results at an May 9, 2018 IEP Team meeting.

5. In order to correct systemic noncompliance in regards to 34 C.F.R. 300.624, USD #___ shall provide a list of all students who were case managed by Ms. S to Early Childhood, Special Education and Title Services along with documentation showing that all parents/legal guardians were informed retroactively of the destruction of these records and offering to re-administer these assessment and to share the results at an IEP Team meeting. Documentation of each student's parent or legal guardian's decision shall be provided to Early Childhood, Special Education and Title Services.

6. USD #___ shall reconvene the IEP meeting to review the AT evaluation data, and make a determination in regards to eligibility and education needs of the child. A final copy of the evaluation report with the AT evaluation incorporated shall be provided to the parent no later than September 30, 2018 and documentation of the IEP team meeting and the Evaluation Report shall be provided to Early Childhood, Special Education and Title Services.

7. Further, USD #___ within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. ___,
_____ Public Schools: 18FC___-002

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on May 11, 2018, by _____ on behalf of her son _____. An investigation of the complaint was undertaken by a complaint investigator on behalf of the Early Childhood, Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, an Initial Report, addressing the allegations, was issued on June 9, 2018. That report concluded that there were violations of special education statues and regulations, and ordered a variety of corrective actions.

Thereafter, on May 19, 2018, both the parent and the school district filed an appeal of the Initial Report. Upon receipt of the appeal, an Appeal Committee was appointed and it reviewed the report, the student's and the district's notice of appeal, the written responses from the district and the parent, and information contained in the complaint file at the Kansas State Department of Education (KSDE). The Appeal Committee has reviewed the information provided in connection with this matter and now issues this final report.

PRELIMINARY MATTERS

The Appeal Committee will limit its inquiry to the issues presented in the appeals. No new issues will be decided by the Appeal Committee. The appeal process is a review of the Initial Report. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Initial Report.

DISCUSSION OF ISSUES ON APPEAL

District's Appeal

The district appealed the conclusion of the investigator in Issue 3 in the Initial Report. In Issue 3, the parent titled the allegation as "Destruction of student records." In her complaint, the parent said: "However, before destroying special education records, the school must notify the parent (or the adult student) that the information is no longer needed to provide services to the student." In the Initial Report, the investigator framed this allegation as failing: "to follow appropriate procedures for destruction of records, specifically by destroying protocols of assessments administered to the students in [the student's] classroom during the past 12 months."

In the Initial Report, the investigator found that the materials that were destroyed were education records. From this finding, the investigator concluded that the district violated federal regulation 34 C.F.R. § 300.624.

In its appeal, the district asserts that the records in question were not education records, and therefore were not subject to 34 C.F.R. § 300.624. The Committee finds it unnecessary to determine whether or not the documents in question were education records because those documents, which are the subject of this complaint, were not subject to 34 C.F.R. § 300.624, regardless of whether they were or were not education records.

34 C.F.R. § 300.624 is as follows:

Sec. 300.624 Destruction of information.

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (Emphasis with bold print added).

The first thing to notice about this regulation is that it does not refer to education records. It refers to "personally identifiable information." So, it applies not just when personally identifiable information is in an education record, but rather, it applies to all personally identifiable information collected, maintained, or used under Part B. The committee notes the parents remarks regarding education records, including that the documents in question likely became education records when the teacher disclosed the existence of those documents to the IEP team. The Committee agrees with the parent that teacher notes can become education records. Teacher notes are, by definition, not education records only if they are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. When a teacher takes his or her personal notes to an IEP meeting and reveals the existence of the notes, the teacher loses the education records exemption given to teacher notes.

On this subject, the complaint investigator found that the shredded "observation notes" were education records. The appeal committee disagrees for a reason not discussed by the complaint investigator. In addition to other requirements, the term "education record" also requires that the record be "maintained" by the district. In Owasso Independent Sch. Dist. v. Falvo, 36 IDELR 62 (U.S. 2002), the United States Supreme Court said: "The word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled." In other words, a document is not "maintained" simply because it is in the possession of a teacher, or even in a teacher's file cabinet, for a short time. To be considered "maintained" the record has to be kept in a central file area, such as a school records room. The assessment material this teacher shredded was

apparently never filed in a school records room or placed on a secure school database, and, for that reason, was not an education record.

As previously indicated, however, whether the documents involved in this part of the complaint were education records is not relevant to this issue. There is nothing in 34 C.F.R. § 300.624 that requires a district to notify a parent prior to destroying personally identifiable information. This regulation does not apply when a district destroys personally identifiable information. Rather, it applies when a district is not destroying personally identifiable information that is no longer needed for educational purposes. When that happens, this regulation requires that the district notify the parents that it still has these records. That notification then triggers a parent's right to request destruction of the records, and if the parents make that request, the district then must then destroy that information, and is permitted to keep a permanent record only of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed. This is a literal interpretation of the language in the regulation, and is supported in a guidance letter from the Office of Special Education Programs (OSEP). OSEP is the office in the United States Department of Education which promulgates the special education regulations. In Letter to Weatherly, 67 IDELR 71 (OSEP 2015) OSEP says: "The purpose of the destruction option is to allow parents to decide that records about a child's performance, abilities, and behavior, which may possibly be stigmatizing and are highly personal, **are not maintained after they are no longer needed** for educational purposes (emphasis added). The notice requirement in paragraph (a) first emerges when a district determines it is retaining personally identifiable information of a child after that information is no longer needed for educational purposes, and that notice acts as a trigger for the parent's destruction option in paragraph (b).

Accordingly, the notice requirement in this regulation applies only to situations where a school district is keeping personally identifiable information after it is no longer needed. In a situation, such as the one in this complaint, where district personnel destroy personally identifiable information, § 300.624 has no application. Moreover, no other regulation pertaining to either the Family Educational Rights and Privacy Act (FERPA) or the Individuals with Disabilities Education Improvement Act (IDEA) requires a district to notify a parent when personally identifiable information of a student is being destroyed.

CONCLUSION

For the reasons stated above, the conclusion of the investigator on Issue 3 in the Initial Report is reversed, and all corrective action regarding Issue 3 in the Initial Report is rescinded. There is no violation of law regarding this issue.

NOTE (1): With regard to FERPA, the Family Policy Compliance Office, which promulgates the federal regulations for FERPA has stated "... a school may destroy education records without notice to the parent unless there is an outstanding request from the parent to inspect and review such records. FERPA would not require a school district to honor a request that education records not be destroyed; However, a school may not destroy education records if there is an outstanding request to inspect and review the records. FERPA does not otherwise address the destruction of education records by a school." See Letter re: Keystone Central School District, 9 FAB 14 (FPCO 2005).

NOTE (2): In her initial complaint, the parent said federal auditing requires the availability of education records for five years after a child with a disability exits from special education services. To be precise, the Committee notes that the five and one-half year retention period required by 2 C.F.R. § 200.333 is a federal administration regulation. It is not a special education regulation and compliance with this regulation is not within the jurisdiction of a special education complaint investigator. In addition, this regulation does not require retention of all personally identifiable information (PII). It requires retention only of records which demonstrate compliance with special education requirements. That would include items such as Evaluations and Re-evaluations (as those terms are defined in special education regulations), IBPs, Prior Written Notices, and parent consent forms. It would generally not include the type of documents destroyed in this complaint. Moreover, notwithstanding this retention requirement, as stated earlier in this decision, a school district is not required to notify parents before destroying PII. However, it could be that in keeping certain documents for audit purposes, a school district may determine that it is keeping PII that is no longer needed for educational purposes. In that event, 34 C.F.R. § 300.624 would require the district to notify parents that it is continuing to hold this information. Again, this is not what happened in this complaint. If the district notifies parents that it is holding PII for audit purposes past the time it is needed for educational purposes, the parents have a right to request the PII be destroyed, and if such a request is made, the PIT must be destroyed. This destruction option is not inconsistent with the federal retention requirements because school districts may "destroy" PII simply by removing all PII from the documents. Thus, a district may comply with both 34 C.F.R. § 300.624 and the federal audit retention requirements by removing all PII from the documents it is holding. Those redacted documents may then still be used for meeting federal audit requirements [See Letter to New, 211 IDELR 473 (OSEP 1987)].

Parent's Appeal

The parent appealed the conclusion of the investigator in Issue 6 in the Initial Report. Issue 6 in the initial report addresses the issue stated in Issue 7 of the parent's complaint. The parent titled Issue 7 as "Free Appropriate Public Education (FAPE)." Under that title, the parent alleged that the student is not receiving a FAPE because he is showing no progress in reading. In Issue 6 in the Initial Report, the complaint investigator phrased this issue as follows: "failed to provide a free appropriate public education (FAPE) to the student specifically by not developing an individualized educational program (IBP) for the student that was reasonably calculated to provide educational benefit during the past 12 months."

Based on a comparison of the February 23, 2017, IBP and the February 16, 2018 IBP and progress reports, the investigator concluded that the student was making progress and that the student's IBP was reasonably calculated to provide a FAPE [See pages 14 and 15 of the Initial Report]. Accordingly, the investigator concluded that there was no violation of law.

The Appeal Committee closely examined all of the documents submitted by both the parent and the school district, including IBPs, proposed IBPs, Progress Reports, and the written statements made by the parties in this appeal. After this examination, the Appeal Committee concluded that it was not able to substantiate that this student's IEP was "reasonably calculated to enable [the student] to make progress appropriate in light of [the student's] circumstances [the standard for

FAPE established by the Supreme Court in Endrew F. v. Douglas County School District, 117 LRP 9767 (U.S. 2017)].

The committee was unable to make this determination, in part, because it concluded that the district, through the student's IBP Team, has not articulated a clear connection between the circumstances related to this student's disability and the special education and related services the student would receive based on the present levels of academic achievement and functional performance. This makes it difficult for an appeal committee to determine the level of progress that would be appropriate for this student. The student has, among other deficits, a diagnosis of dyslexia, mixed receptive-Expressive Language disorder, ADHD, and asthma, in addition to being an English Language Learner.

In addition, the committee was limited in its examination of this issue because:

it concluded that the IBP was not sufficiently specific in the following required component:

34 C.F.R. § 300.320(a)(l), which requires the IBP to include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum. Specifically, because the IBP did not provide a clear link between the baseline data and the student's IBP goals (e.g., the baseline data was frequently stated in a different measurement than the measurement for the goal, making it impossible to discern progress), the committee was unable to find clearly stated present levels of academic achievement and functional performance on which to assess the student's progress toward IBP goals; and

(2) it concluded that, although the subject boxes were checked, the statement of present levels of academic achievement and functional performance did not sufficiently indicate that the IBP team had given appropriate consideration to:

(a) the academic, developmental, and functional needs of the child [34 C.F.R. § 300.324(a)(4)]; and

(b) in the case of a child with limited English proficiency, the language needs of the child as those needs relate to the child's IBP [34 C.F.R. § 300.324(a)(2)(iii)];

The unclear statement of the child's present levels of academic achievement and functional performance did not provide the committee with the necessary information to determine whether the child's IBP was reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. These IBP deficits are procedural violations oflaw. The Committee notes that the parent is correct in her appeal in saying the Supreme Court, in Rowley, said Congress put as much emphasis on compliance with procedures as it did with any substantive standard for measuring the IBP. However, in 2004, some 20 years after the Rowley decision, Congress changed the law to say that any determination regarding whether a school provided FAPE must be made on substantive grounds, and any allegation of a violation of FAPE based on procedural violations may be substantiated only if the procedural inadequacies: impeded the child's right to FAPE; significantly impeded the parent's opportunity to participate

in the decision making process; or caused a deprivation of educational benefit [20 U.S.C. § 1415(t)(3)(E)]. Thus, with regard to whether FAPE is provided, the emphasis the Rowley court placed on procedural violations has been greatly diminished.

CONCLUSION

As indicated earlier, the Committee found procedural violations in this IEP, but was not able to substantiate that the current IEP was not reasonably calculated to provide this student with a FAPE. The procedural violations, although not found to be a violation of FAPE in this instance, are significant and require corrective action.

Accordingly, the investigator's conclusion that the student's IEP is reasonably calculated to enable the student to make appropriate progress in light of the child's circumstances and to have the chance to meet challenging objectives is sustained. However, the committee has also concluded that the school district is in procedural violation of 34 C.F.R. § 300.320(a)(l), 34 C.F.R. § 300.324(a)(4), and 34 C.F.R. § 300.324(a)(2)(iii), for the reasons stated above.

CORRECTIVE ACTION

The following corrective actions are required:

1. Within **14** days of the date of this decision, the district shall provide the parent with a prior written notice (PWN) and request for consent for a full special education re-evaluation of the student in all areas related to the student's disability, including the communication needs of the student. The district will provide Early Childhood, Special Education, and Title Services (ECSETS) with a copy of the PWN and request for consent within 5 days of sending it to the parent. If parent consent is received, the district will provide a copy of the signed consent form to ECSETS, and shall complete the re-evaluation within 60 school days of receipt of consent, and provide a copy of the evaluation report to ECSETS within 10 days of completion of the report;

2. Within 14 days of the date of this decision, the district shall offer to pay for an Independent Educational Evaluation (IEE) of the student from an evaluator selected by the parent, subject to any established district criteria for an IEE;

3. Within 10 school days of completion of the re-evaluation required in corrective action 1 (if parent consent is received), and the IEE required in corrective action 2 (if the parent elects to have an IEE conducted), the school district shall: (a) schedule an IEP meeting to be held, after sufficient notice of such meeting, to consider the information in the re-evaluation and the IEE, if any, to develop a new proposed IEP for this student; and (b) notify ECSETS of the date of the scheduled meeting, if any; and

4. Within 30 days of the first day of school in the 2018-2019 school year, the district shall provide training to all special education staff members who are, or may, participate in the development of IEP's during the 2018-2019 school year on how to write effective present levels of academic achievement and functional performance, and how to use that data to develop

measurable annual goals in an IEP. The person assigned to provide this instruction: (a) may not be an employee of the _____ Special Education Cooperative or any school district within the Cooperative. In addition, the district shall, within 14 days of the date of this decision, seek ECSETS approval of the person proposed by the Cooperative to provide this training, and shall receive ECSETS approval before conducting the training.

This is the final decision on this matter, there is no further appeal. This final decision is issued this 10th day of July, 2018.

APPEAL COMMITTEE:

Melissa Valenza

Laura Jurgensen

Stacie Martin

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON MAY 16, 2018

DATE OF REPORT: JUNE 15, 2018

This report is in response to a complaint filed with our office by _____ on behalf of his daughter, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the father" or "the parent(s)." The complaint was received on May 16, 2018. The Kansas Department of Education allows for a 30 day timeline to investigate the child complaint which ends on June 15, 2018.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, spoke with USD #___ staff by telephone on June 6, 2018. USD #___ made the following staff persons available as part of the investigation process:

- SS, Assistant Director of Special Education
- JC, Principal
- CM, School Psychologist
- NC, Speech Language Pathologist
- CB, Social Worker

The Complaint Investigator also spoke to the father by telephone on May 23 and June 5, 2018 as part of the investigation process.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Evaluation Reports for the student dated November 13, 2017 and May 1, 2018
- Individual Educational Program (IEP) for the student dated October 13, 2017 and amended on May 1, 2018

- Formal Complaint Request written by the father dated May 11, 2018
- Letter written to the investigator by USD #___ responding to the allegations
- Timeline dated May 25, 2017 through May 29, 2018 provided by USD #___
- Copy of the Investigation Report of 18FC___-003 dated April 24, 2018
- Kansas City Center for Anxiety Treatment (KCCAT) Report dated April 30, 2018
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 2, 2018 refusing to identify the student under the category of Emotional Disturbance and proposing additional IEP services and accommodations
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 2, 2018 refusing counseling services for the student
- Presentation created by the father and shared at the IEP Team meeting held on April 18, 2918
- Letter written to USD #___ by the father dated May 3, 2018

Background Information

This investigation involves an eight year old girl who attends the C___ School, a private school in the boundaries of USD #___. Records show the student was initially enrolled in kindergarten during the 2015-16 school year at _____ Elementary School in USD #___ but was withdrawn from USD #___ on December 18, 2015. The student then attended _____, another local private school, until her enrollment at the C____ School during the 2017-18 school year. The C____ School is ungraded; however, based on the student's age and years of school attendance, the student would be considered to have been in the second grade during the 2017-18 school year.

The student was initially evaluated and found eligible for special education and related services under the exceptionality category of Other Health Impaired on November 13, 2017. USD #___ provided prior written notice proposing an IEP but the parents refused to grant consent for services. Records and interviews found that the father and USD #___ staff met on multiple occasions to discuss an IEP for the student and the parents provided consent for the initial provision of special education and related services on April 20, 2018.

Issues

The complainant raised four issues which were investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegations in this complaint cover the time period during the 2017-18 school year.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to appropriately consider additional evaluations provided by the parents when determining eligibility and developing an individualized education program (IEP) for the student during the 2017-18 school year.

Findings:

The father reported the student has been evaluated at parent expense on three separate occasions by three different professionals from three different agencies and, in all cases, the student has been diagnosed with anxiety. The father indicates that the results of these three independent evaluations were shared with USD #___. However, the father believes USD #___ completely disregarded these findings at the May 1, 2018 evaluation determination meeting when considering eligibility as well as when developing the May 1, 2018 amendment to the November 13, 2017 IEP.

The parent and USD #___ staff agree the following three outside evaluations were conducted at parent expense and the results were provided to the school district during the 2017-18 school year:

- Stormont Vail Psychological Evaluation Report dated May 16, 2017
- Children's Mercy Evaluation Report dated December 19, 2017
- Kansas City Center for Anxiety Treatment (KCCAT) Report dated April 30, 2018

Following the special education evaluation conducted by USD #___ on November 13, 2017, the parent sought an evaluation at Children's Mercy Hospital due to concerns that the student had Autism. The results of that evaluation ruled out Autism Spectrum Disorder but supported the previous diagnoses of ADHD, Separation Anxiety Disorder, and Generalized Anxiety Disorder. Documentation and interviews found the Children's Mercy Evaluation Report was shared with USD #___ in January 2018 and that this evaluation

report was reviewed and discussed at IEP Team meetings held on March 6, and April 18, 2018.

On January 9, 2018, the father requested the student be reevaluated for eligibility under the category of Emotional Disturbance and for the IEP to include counseling services based upon the Children's Mercy Evaluation Report. USD #___ provided the parent with Prior Written Notice requesting consent to conduct a reevaluation of the student without additional assessment. Documentation shows the written consent for the reevaluation without additional assessment was provided by the father on March 6, 2018. A reevaluation without assessment was then conducted over the course of three IEP Team meetings held on March 6, April 18, and May 1, 2018.

Documentation and interviews showed the parent provided USD #___ with a copy of the KCCAT Evaluation Report on April 30, 2018. This report included the current diagnoses of Oppositional Defiant Disorder, Generalized Anxiety Disorder, Separation Anxiety, and Other Animal Type Phobia (flying insects) as well as describing the current treatment recommendations for both individual and family therapy. Documentation and interview found the KCCAT report was reviewed and discussed at the IEP Team meeting held on May 1, 2018.

USD #___ concluded the reevaluation without assessment on May 1, 2018. Documentation and interviews found that all three of the evaluations were considered at the May 1, 2018 eligibility determination meeting and are documented in the Evaluation Report. The Evaluation Report dated May 1, 2018 notes that the student's initial eligibility under the category of OHI was based on the Stormont Vail Psychological Evaluation which documented the diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), anxiety, partial complex seizures, and double vision. It also notes that the Children's Mercy Hospital Evaluation ruled out Autism Spectrum Disorder but supported the previous diagnoses of ADHD, Separation Anxiety Disorder, and Generalized Anxiety Disorder. Finally, the Evaluation Report includes the results of the KCCAT report showing support for the diagnoses of Oppositional Defiant Disorder, Generalized Anxiety Disorder, Separation Anxiety, and Other Animal Type Phobia (flying insects).

The May 1, 2018 Evaluation Report documents the determination that the student did not meet the eligibility criteria to be identified as Emotionally Disturbed but continued to be a child in need of special education and related services under the disability category of OHI due to the medical diagnoses of

ADHD, anxiety, partial complex seizures, and double vision. A PWN refusing to identify the student under the category of Emotionally Disturbed was mailed to the parents on May 2, 2018.

The originally proposed IEP developed on November 13, 2018 was amended at the IEP Team meeting held on May 1, 2018. This IEP documents that the student has been diagnosed with ADHD, separation anxiety, generalized anxiety disorder, partial complex seizures, double vision, and Oppositional Defiant Disorder (ODD). This IEP includes accommodations to address off-task behaviors, anxiety, and double vision such as a near point copy of notes, directions given in a variety of ways, extended time for oral and written responses, use of graph paper, allowing frequent breaks, providing a visual schedule, preferential seating, alerting the student to transitions, fire drills, and tornado drills, and providing social narratives for specific problems that occur such as peer relationships, how to take a break, what to do if she is feeling anxious, how to initiate play, how to say “no”, etc. This IEP also includes 15 minutes per week of indirect services to address the student’s social/emotional concerns in collaboration with her classroom teacher. A PWN describing these proposed changes was mailed to the parent on May 2, 2018.

Federal regulations, at 34 C.F.R. 300.502, require public agencies to consider the results of an independent evaluation obtained by the parent at private expense and shared with the public agency in decisions made in respect to the provision of a free appropriate public education (FAPE). There is no requirement that the public agency accept the results of these types of independent evaluations, only that the results of the independent evaluation is considered when making decisions with regard to FAPE.

In this case, it appears that all three independent evaluations obtained by the parent were shared with USD #___ at some point during the 2017-18 school year. Documentation and interviews found that all three of these evaluations were discussed at the May 1, 2018 IEP team meeting and the results of all three evaluations were included in the Evaluation Report dated May 1, 2018. Documentation also shows the May 1, 2018 IEP includes a listing of the student’s medical diagnoses as well as includes accommodations and indirect services to address the concerns noted in the independent evaluations including off-task behavior, anxiety, and double vision.

Based on the foregoing, the allegation of noncompliance in regards to the allegation that USD #___ did not appropriately consider the results of independent evaluations in decisions related to FAPE is not substantiated.

> **ISSUE TWO:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures related to the formal and informal assessments used to conduct a special education evaluation of the student during the 2017-18 school year.

Findings:

The father reported that USD #___ failed to conduct an appropriate assessment to determine if the student was eligible for special education and related services under the eligibility category of Emotionally Disturbed on May 1, 2018.

First, the father believes the classroom observations of the student were not properly conducted. He indicates the observations were not detailed or objective measures of the student's functioning. The father also indicated there were not enough observations conducted to provide an accurate "snapshot" of the student. The father stated "*Anxiety may be non-elevated during the observation period and this is why best practice would be to have a record log of behaviors or a recorded observation record over time including a "control" – in this case another typical peer or other student who does not have anxiety*."

The second concern involves the use of the BASC in the eligibility process. The father reported this assessment is not designed for diagnostic purposes and is heavily dependent on the subjective view of the adult who is completing the rating scale. The father pointed out that the publisher's manual for the BASC states that the BASC cannot be used by itself to give a diagnosis or be used solely to determine a disability. The father also believes USD #___ incorrectly analyzed the results of four administrations of the BASC over time. The father created and shared a detailed analysis of all four BASC reports at the April 18, 2018 IEP Team meeting. This presentation included the student's clinical history, a summary of the father's analysis of the four BASCs as well as recommendations for goals and services.

At the May 1, 2018 IEP Team meeting, the parent shared a written summary which included a detailed review and analysis of the student's clinical history, independent evaluations, and district evaluations. The summary also includes a

rationale for making an eligibility determination under the category of Emotionally Disturbed.

The father provided USD #___ with a letter dated May 3, 2018 which explains why the parent disagrees with the results of the May 1, 2018 Evaluation Report. The findings of Issue One are incorporated herein by reference.

USD #___ reports the district completed two comprehensive evaluations of the student during the 2017-18 school year addressing all areas of concern and utilizing a variety of assessment tools and strategies to determine the need for special education and related services. The first evaluation was completed on November 13, 2018 and the second evaluation was completed on May 1, 2018.

The second evaluation was conducted through a review of existing data without obtaining additional assessment with parent consent. Existing information consisted of the November 2017 Evaluation, a December Children's Mercy Evaluation Report, other information provided by the parent prior to and at the April and May IEP Team meetings including another independent evaluation from KCCAT as well as information provided by the student's current teacher at the C____ School. USD #___ staff indicated the May 1, 2018 Evaluation Report only lists the key points from the existing data to determine eligibility for Emotional Disturbance because the evaluation data and findings are extensively explained in the existing and previous reports,. For this reason, the previous observations and assessment results are summarized in the May 1, 2018 Evaluation Report rather than thoroughly documented as in the November 13, 2017 Evaluation Report.

Documentation showed three classroom observations were included in the November 13, 2017 Evaluation Report. Each observation included the date and time of the observation, who conducted the observation, and specific descriptions of the student's behavior. The Evaluation Report also summarizes the results of both current and previous administrations of the Childhood Autism Rating Scale (CARS), the Social Skills Improvement System (SSIS), and the BASC as measures of social/emotional functioning of the student. It is noted that these assessments and observations were administered or completed by the father; Dr. Mary Wilson, Licensed Psychologist, at Stormont Vail; several of the student's classroom teachers; the School Psychologist, and the Autism / Behavior Consultant.

Federal regulations, at 34 C.F.R. 300.304, require public agencies to ensure that:

> (1) a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum, that may assist in determining whether the child is a child with a disability, and the content of the child's IEP;
>
> (2) no single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child;
>
> (3) the public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and
>
> (4) assessments and other evaluation materials used to assess a child are used for the purposes for which the assessments or measures are valid and reliable and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

In this case, it appears the student has been assessed using a variety of technically sound instruments administered by trained and knowledgeable personnel following standardized testing procedures and that eligibility was not determined based upon any single instrument.

Based on the foregoing, the allegation that USD #___ failed to follow appropriate procedures related to the formal and informal assessments used to conduct a special education evaluation of the student during the 2017-18 school year is not substantiated.

NOTE: The IDEA includes procedures to follow if the parent disagrees with the results of a special education evaluation including mediation, due process, and obtaining an independent evaluation at public expense. The parent should refer to the Procedural Safeguards statement and the PWN for this information.

ISSUE THREE: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to develop an appropriate individualized education program (IEP) for the student during the 2017-18 school year, specifically by not addressing the student's anxiety.

Findings:

The father believes USD #___ "continues to fail to identify my child's needs by neither denying nor acknowledging that my daughter has general anxiety and separation anxiety that significantly impact her." The father indicated that the IEPs developed on November 13, 2017 and the amendment to this IEP dated May 1, 2018 do not appropriately address the student's anxiety concerns.

The IEP developed on November 13, 2017 includes a goal to address basic math skills, reading fluency skills, and visual/motor skills including legibly writing letters and numbers as well as correct spacing in written work. The IEP includes special education instruction in the special education setting for 160 minutes per week for math and 160 minutes per week of reading and writing. The IEP also includes special education support services in the general education setting for math, reading, and writing for 300 minutes per week. Occupational Therapy (OT) services will be provided for 20 minutes per week to address visual/motor skills. As noted previously, the parent refused consent for these proposed special education and related services.

A previous child complaint investigation found that the IEP team appropriately considered the parent request for counseling services to be included in the IEP and that USD #___ appropriately provided the parent with a PWN refusing those services on November 28, 2017. Documentation and interviews found that the parent and USD #___ staff continued to meet and discuss the parent's concerns regarding the appropriateness of the IEP at two subsequent IEP Team meetings on March 6 and April 18, 2018.

The findings of Issue One are incorporated herein by reference regarding the May 1, 2018 IEP Team meeting.

Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education (FAPE) available to all children residing within the district. Federal regulations, at 34 C.F.R. 300.17, defines the term "free appropriate public education" as providing special education and related services at no charge to the parent, under the supervision of the public agency, and in

conformity with an IEP that was designed to meet the unique needs of the child and to confer educational benefit to the child.

In this case, it appears that USD #___ has acknowledged, recognized, and addressed the student's diagnoses of anxiety. Both of the Evaluation Reports dated November 13, 2017 and May 1, 2018 respectively include the medical diagnoses of anxiety from the independent evaluations provided at parent expense. There is documentation to support that USD #___ met with the parents on multiple occasions during the 2017-18 school year to discuss the parent's concerns regarding anxiety and social/emotional needs. The November 13 2017 IEP was amended on May 1, 2018 to include references to all of the medical diagnoses. In addition, various accommodations were added to the IEP to address anxiety and social/emotional concerns. Finally, the May 1, 2018 amendment adds indirect special education services to specifically address collaboration with the classroom teacher for social/emotional issues.

Based on the foregoing, the allegation of noncompliance in regards to the allegation that USD #___ did not develop an appropriate individualized education program (IEP) for the student during the 2017-18 school year, specifically by not addressing the student's anxiety, is not substantiated.

> **ISSUE FOUR:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to appropriately respond to a parent request for counseling services to be included in the student's individualized education program (IEP) during the 2017-18 school year.

Findings:

The father believes that the student's IEP should include counseling services to address anxiety and social/emotional concerns. The father indicated that the cost of counseling services the student is currently receiving should be reimbursed to him as these services should be provided at no cost to the parent through the IEP.

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

At the IEP Team meeting held on April 18, 2018, the team reviewed and discussed two of the independent evaluations provided at parent expense that had been completed to date along with input from the parent and private school staff and the November 13, 2018 Evaluation Report. Due to time constraints, the

parent and USD #___ reconvened this IEP Team meeting on May 1, 2018 to continue the discussions for eligibility determination and the review/revision of the IEP.

At the May 1, 2018 IEP Team meeting, documentation and interviews found the IEP Team considered the parent requests for social/emotional goals and services. After discussion and consideration, it was determined that related services addressing social/emotional/behavioral needs were not needed nor were goals for the social/emotional/behavioral areas. The IEP team did amend the student's IEP to include accommodations and indirect special education services to address the student's anxiety.

Documentation shows USD #___ provided the parent with a PWN dated May 2, 2018 refusing to provide "*a variety of mental health related services, such as individual therapy, school-based mental health services, and family therapy*."

The explanation for this action states that the team carefully reviewed the evaluation information from both the November 13, 2017 and the May 1, 2018 evaluations as well as all the information considered as part of these evaluations and determined that the addition of family therapy, individual therapy, or other mental health related school based services are not necessary to meet the student's educational needs. The PWN documents that "*the team did propose changes to the IEP, particularly the addition of accommodations and indirect services to address identified needs and also identified existing general education interventions available to address concerns brought up by the parent." The PWN notes that adding mental health services and/or therapy was rejected as the current proposed goals and services in the IEP are appropriate to meet the student's needs at this time.*

Federal regulations, at 34 C.F.R. 300.503, require that public agencies must provide prior written notice to parents a reasonable time before the responsible public agency refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student.

In this case, it appears the father did make a request for counseling services to be included in the student's IEP. Documentation and interviews found this request was considered at the May 1, 2018 IEP Team meeting. USD #___ mailed the parent a PWN refusing the requested counseling services which

explained the rationale for the refusal along with the Procedural Safeguards statement.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to not providing appropriate PWN to the parents of the student when refusing the parent request for counseling services is not substantiated.

NOTE: The IDEA includes procedures to follow if the parent disagrees with the decisions made at an IEP Team meeting with regards to special education and related services including mediation and due process. The parent should refer to the Procedural Safeguards statement and the PWN for this information.

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas
Complaint Investigator

(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)

KANSAS STATE DEPARTMENT OF EDUCATION
EARLY CHILDHOOD, SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON MAY 23, 2018

DATE OF REPORT: JUNE 25, 2018

This report is in response to a complaint filed with our office by _____ behalf of her son, _____. In the remainder of this report, _____ will be referred to as "the student" while _____ will be referred to as "the mother" or "the parent."

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted Dr. R, Director of Special Education at USD #___ on June 4, 2018 regarding the plan to investigate the complaint. On June 5, 2018. Dr. R indicated USD #___ would provide a written response with supporting documentation as staff were unavailable to participate in any interviews due to the summer holiday.

The Complaint Investigator spoke to the mother by telephone on May 30, 2018 regarding the plan to investigate the complaint. An email was sent to the mother on June 4, 2018 offering four dates between June 8 and June 19, 2018 for scheduling an interview and requesting the parent provide any additional documentation to support her allegations. No response was received from the parent and the Complaint Investigator attempted to contact the parent via phone and email on June 20 and June 21, 2018 to obtain her input into the investigation. The information contained in the Formal Complaint Request Form date stamped on May 23, 2018 is referenced in the investigation as the mother did not schedule an interview and did not provide any additional documentation.

In completing this investigation, the Complaint Investigator reviewed the following material:

- Formal Complaint Request Form date stamped May 23, 2018

- Letter to the Complaint Investigator from Dr. R dated June 4, 2018 outlining USD #___'s response to the allegations
- Individual Educational Program (IEP) for the student dated November 27, 2017
- Reevaluation Not Necessary Agreement for the student dated November 27, 2017
- Student's _____ High School / ____ Academy Class Schedule for the 2017-18 school year
- Student's _____ High School Transcript
- Student's _____ High School Four-Year Planning Worksheet
- Student Advisor / School Psychologist Log written by SP dated November 8, 2017 through May 21, 2018
- Special Education Teacher Contact Log written by MB dated January 11 through May 10, 2018
- Forensic Science Teacher – IEP Accommodations and Missing Assignments Log written by Mrs. T. L. dated March 20 through May 25, 2018
- English Language Arts Teacher Accommodations written by SM
- Emerging Tech Accommodations dated March 21 through May 23, 2018
- Weights and Conditioning Accommodations written by C. P. dated January 12 through March 6, 2018
- Health Class Accommodations written by C. P. dated May 23, 2018
- Math Accommodations written by J. H. dated May 25, 2018
- USD #___ Procedures for Notifying General Education Staff
- Best Practices for Special Education Resource

Background Information

This investigation involves a sixteen year old young man who was enrolled in the 10th grade in USD #___ during the 2017-18 school year. Records show the student attended _____ High School during first semester. During second semester, the student attended first hour at _____ High School and the rest of the school day at ____ Academy, an alternative high school program that provides an education alternative to students from the five high schools in USD #___.

The student's most recent reevaluation was conducted on January 10, 2015 and documentation shows the parent and public agency agreed that a reevaluation was not necessary on November 27, 2017. The student is eligible for special

education and related services under the exceptionality categories of Other Health Impaired due to a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and Gifted.

Issues

The complainant raised two issues which were investigated. The IDEA allows child complaint investigations to cover a 12 month period from the date the Kansas State Department of Education receives the complaint. The parent's allegations in this complaint cover the time period during the 2017-18 school year.

> **ISSUE ONE:** The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically by not providing the required accommodations/modifications to the student during the 2017-18 school year.

Findings:

The mother reported the USD #___ failed to ensure the accommodations and modifications required by the student's IEP were implemented during the 2017 – 18 school year. This resulted in missing assignments which ultimately caused the student to fail two classes during his first semester at _____ High School.

The mother also indicated the accommodations and modifications were not provided in the classes at ____ Academy during second semester which also resulted in multiple missing assignments. This was compounded by the student missing several days of school at the end of March and beginning of April 2018 due to inpatient treatment at Crittenden Children's Center.

In addition, the mother reported that ____ Academy has a weekly Required Academic Time (RAT) for completing missing assignments but that the student was only given the option to physically work on missing assignments, not the verbal option as set forth in the IEP. The mother indicated that student is at risk of failing his classes during second semester because of missing assignments as well.

The mother specifically states the student was not given the opportunity to show mastery of concepts and thus be exempted from daily work involving that

concept and was not allowed to provide answers verbally on tests and assignments. In addition, the mother indicated the student's other accommodations and modifications were also not implemented as required by the IEP.

Documentation found an IEP dated November 27, 2017 that was in effect between November 27, 2017 and May 30, 2018, the majority of the 2017-18 school year. No IEP was provided by either party for the time period between the months of August and the end of November of the 2017-18 school year; therefore the Complaint Investigator was not able to evaluate whether the required accommodations and modifications were provided to the student during that timeframe.

The Present Levels of Academic Achievement and Functional Performance in the November 27, 2017 IEP describe the student as having the ability to achieve well beyond his grade level peers. However, due to his diagnosis of ADHD which affects executive functioning, it is often difficult for the student to maintain focus and complete class assignments. The IEP also notes that when the student is overwhelmed with late work, his anxiety and frustration increases leading to behaviors such as blurting out in class, using a loud voice, being defensive with teachers when redirected, and he becomes less motivated to complete work and his time on task decreases.

The November 27, 2017 IEP includes the following accommodations and modifications for classroom instruction / assignments:

- Extended time as agreed upon with teacher before the assignment is due
- Chunking assignments and due dates.
- Scribe-Option to give answers verbally/scribe – student has difficulty getting information from his head to the paper.
- Printed copy of notes
- If student demonstrates mastery of a concept through pre-assessment or post-assessment, he will be exempted from daily work involving that concept.
- Allow student to do class work in an alternate environment upon request. This should be the counselor's office, school psychologist's office or school interventionist's office.

The November 27, 2017 IEP also includes the following accommodations and modifications for assessments:

- Extended time

- Take test in a quest non-competitive setting
- Oral test administration

Documentation provided by USD #___ showed the student was enrolled in the following classes at _____ High School during first semester:

Class Period	Class	Teacher
1	PASS	G, M.
2	Modern World History	O, J.
3	English Language Arts 10	F, K.
4	English Language Arts 9	W, A.
5	Gifted Education	A, C.
6	Earth-Space Science	H, J.
7	Geometry	H, N.

Documentation shows the student failed Modern World History and English Language Arts 10 at the end of first semester. USD #___ did not provide any documentation to show the accommodations and modifications required by the IEP dated November 27, 2017 were provided to the student in any of these classes between November 27, 2017 and January 4, 2018 when the student began attending ____ Academy.

Documentation provided by USD #___ showed the student was enrolled in Study Hall during first hour at _____ High School where he received gifted services and case management from C.A., Gifted Teacher. The student was enrolled in the following classes at ____ Academy during second semester:

Class Period	Class	Teacher
1 – 3rd quarter	Earth-Space Science	L. T.
2 – 3rd quarter	English Language Arts 10	M, S.
3 – 3rd quarter	Weight Training/Conditioning	P, C.
4 – 3rd quarter	Health and Wellness	P, C.
Class Period	Class	Teacher
1 – 4th quarter	Emerging Technologies	T, C.
2 – 4th quarter	English Language Arts 10	M, S.
3 – 4th quarter	Geometry	H, J.
4 – 4th quarter	Intro to Forensic Science	L, T.

Documentation provided by SP, School Psychologist, showed the student skipped school and was absent on multiple occasions during second semester.

Intervention team meetings were held monthly to discuss concerns with attendance, how to engage the student, missing assignments, and failing grades. The student was hospitalized on March 29 and returned to school on April 9, 2018. The mother expressed concerns that the IEP was not being implemented as written and Ms. P. reported that several staff responded to those concerns on April 27, 2018. This documentation also shows IEP accommodations and modifications were reviewed with the student's current classroom teachers on May 2, 2018 and that the teachers reported the student "needs to choose to do his work."

Documentation provided by M.B., Special Education Techer, showed assignments and due dates were chunked for missing English Language Arts assignments on April 9, 2018 when the student returned from being hospitalized. The student was provided an alternate setting to complete work from the Health and English Language Arts classes on 13 separate dates between January 11 and May 10, 2018.

No documentation was provided with regards to accommodations and modifications being provided in the Earth-Space Science class.

SM, English Language Arts Teacher, provided documentation describing chunking of assignments and due dates, allowing the student to scribe responses and to use text to speech software for writing assignments, and allowing the student to work in an alternate environment. Documentation found that "*the student regularly requested to work in the library – which I have routinely permitted – he has not to this time requested working in the office of social worker, school psych, etc. However, when he was offered those as choices he refused choosing to stay in the library."* Documentation reflected the curriculum of this class does not allow for pre/post assessments and that class notes are not taken; however, all presentation materials were available digitally via Canvas, an online program.

Documentation showed there were three types of assignments for the Weights and Conditioning Class – a quote of the day which is copied from the board; a workout in which the student is physically active; and a weekly matching test on muscles and anatomy. The student's missing assignments for this class included 22 quotes that were to be copied from the board. It was also noted that the student did not participate in the physical activity because he asked to utilize the class time to work on other classes from February 1 until the end of the term because "he would rather work on required course work and try to pass those

classes." Documentation reflected that grades in this class are based on participation which does not allow for pre/post assessments and that class notes are not taken; however, all information for the tests were digitally available via Canvas.

The Health class was an online class with all assignments having suggested due dates; however, it was noted that any work completed would have been accepted until the end of the semester. An alternate environment to complete work was provided. Documentation showed "*Most days the student chose to work at a table just outside of the classroom (this was a quiet area close enough to the room that I could check on him and be available to answer any questions that he had). Another alternative location that the student asked to utilize (on a few occasions) and was allowed to use was Mr. B's room. The student and I agreed that these two areas or the classroom would be agreeable to both of us*." Documentation reflected the curriculum of this class does not allow for pre/post assessments and that class notes are not taken because all presentation materials were available digitally via Canvas.

The Emerging Tech class was described as a skills-based course. Documentation shows assignments were chunked on a regular basis and that the student was given the option of alternate location to complete work but declined. It was noted that the student did choose to go to the library with a para on the final exam review day but reportedly played video games and completed an assignment for another class. Documentation stated "*On multiple occasions, the student stated he could not focus due to medicine not having kicked in. When asked when it normally kicks in, he stated he did not know. On multiple occasions the student stated he would start work in 5-10 minutes (while playing a game) and then once rechecked with would not shift from video games to begin work. He spent many periods playing video games with no attempt to work on assignments*." Documentation reflected the curriculum of this class does not allow for pre/post assessments and that class notes were only taken once on a Digital Poster unit. In that situation, the student had access to the notes via Canvas and access to print in the classroom.

Documentation from the Math class found regular chunking of assignments and allowing the student to use the library as an alternate environment upon request. It was noted "*Mastery of concepts in my class are demonstrated through the completion of 10-15 problems which serve as a pre and post assessment for each lesson. Here at ____ Academy because we have a 4x4 schedule, many learning objectives are compacted and presented in a manner that doesn't*

always allow for pre and post assessment. Completing a semester in 9 weeks shortens many of the smaller assessments which are replaced by smaller formative assessments which are also much more subjective and arbitrary. Summative assessments in my class have been a big hurdle for the student. He has only sat to take one of the Unit tests throughout the quarter. The only assessment he did take he scored a 55% proficiency. This post assessment would not have been able to be an example of his understanding at an acceptable level." Documentation reflected the curriculum of this class does not allow scribing/verbal responses. The teacher noted "*Copies of notes were made available upon request, the student never asked for printed copies of notes and more over early on in the class the student told me he didn't want the notes and that he didn't need notes to be printed at that time. I assured him that if the need arose he would have been able to have those notes given time to produce them. Videos were provided to help all students review and prepare for assessments and to help with re-teaching and check for understanding. The student didn't use these videos to help himself move through the material he missed nor did he talk the time to complete missing make up work during RAT or before school or during breakfast break or lunch. All of these times throughout the day I am more than available to any student who is needing remediation or in this case seeking accommodations."*

The Math class documentation and documentation from the Forensic Science class both showed the student was absent or missed every one of the RAT opportunities to make up missed work beginning with the third week of the last ten week term. No documentation was provided to show that the student was allowed to complete missing assignments verbally or by being scribed during the RAT opportunities the student did attend during second semester.

Ms.L, the Forensic Science Teacher, reported assignments and due dates were chunked and that the student was allowed to respond orally or scribe his responses on both tests and assignments. There were also several assignments that were not required to be completed as the student demonstrated mastery of the concept such as the safety lab, forensic terms, and forensic science bones. The documentation showed the student was allowed to go to an alternate setting and did not attend the Forensic Science class during the majority of May because he chose to work in the library on assignments from the English Language Arts class. Documentation showed printed copies of class notes were provided to the student.

Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education available to all children residing within the district. 34 C.F.R. 300.17 defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP.

Federal regulations, at 34 C.F.R. 300.320(a)(4), requires the IEP to include a statement of the program modifications that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

In this case, it appears that an IEP was developed on November 27, 2017 which includes specific accommodations and modifications to be provided for classroom assignments as well as assessments. No documentation was provided to show the required accommodations and modifications were provided in any classes at _____ High School during first semester or in the Earth-Space Science class at ____ Academy during second semester.

The documentation provided does show several but not all of the required accommodations and modifications were provided in the other classes while the student was attending ____ Academy during the second semester. Chunking of assignments and due dates seems to have been provided in all classes during second semester. The accommodation of using pre/post-tests for reducing assignments for mastered concepts was provided in the Forensic Science class but reportedly not appropriate in the other classes based on the curriculum. All classes reported allowing the student to work in an alternate setting; however, none of the alternate settings were those required by the IEP. Documentation reflected that class notes were provided in the Forensic Science class; however, the class notes were not provided in the Math class and other classes only made notes available digitally via Canvas, the online program.

The responses of the ____ Academy classroom teachers suggests that while they may have generally known what accommodations and modifications were required by the student's IEP, they did not fully understand how to provide these required accommodations and modifications to the student.

Documentation suggests the student was either allowed to choose whether or not to accept an accommodation and modification or was required to request an accommodation and modification before it was provided. The November 27,

2017 IEP only includes one accommodation and modification that must be requested by the student, specifically allowing the student to do class work in an alternate environment upon request. And as noted previously, while this accommodation and modification was provided in most classes, the alternate environment provided for the student was not one of the three specific settings listed in the student's IEP.

Based on the foregoing, the allegation of noncompliance in regards to the allegation that USD #___ did not implement the IEP as written, specifically by not providing the required accommodations and modifications, is substantiated.

ISSUE TWO: The USD #___, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to appropriately inform school staff of their responsibilities for implementing the student's IEP during the 2017-18 school year.

Findings:

The parent reported the general education teachers at ____ Academy were not aware of their responsibilities for implementing the accommodations and modifications as required by the IEP of the student. The mother reports the failure to ensure the required accommodations and modifications were implemented resulted in the student failing classes as a result of numerous missing assignments. The mother reports meeting with staff at ____ Academy to discuss her concerns.

The findings of Issue One are incorporated herein by reference.

USD #___ reported procedures for informing appropriate staff of their responsibilities are contained in their Best Practices for Special Education Resource. Documentation shown on page 41 of this resource includes the statement "*General education teachers must be knowledgeable about the accommodations and modifications needed by the students*." The special education teacher is given the responsibility to ensure the provision of accommodations and modifications as described in the IEP on page 42 of this resource. On page 43 of this resource, the special education teacher is instructed to provide an "*IEP at a Glance"* to anyone who works with the student and has a need for the information. It is noted that an "IEP at a Glance" includes a listing of the accommodations and modifications required by a student's IEP.

USD #___ indicated that best practices are actively taught to new teachers during orientation and reviewed with veteran staff yearly. This includes the requirement to communicate with general education teachers about their responsibility to implement the IEP. All staff are provided with a link to the Best Practices for Special Education Resource at the beginning of every school year.

Federal regulations, at 34 C.F.R. 300.323(d), require each public agency to ensure each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP; and, of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, it appears USD #___ has policies and procedures in place to ensure general education teachers are informed of their responsibilities for implementing the student's IEP which includes the accommodations and modifications. However, the only documentation provided show that staff working with the student at ____ Academy did not meet until May 2, 2018 to review the accommodations and modifications required by the student's IEP and no documentation was provided to show the staff at _____ High School were informed of their IEP responsibilities.

Based on the foregoing, the allegation of a violation of special education laws and regulations related to ensuring each teacher and provider is informed of his or her specific responsibilities related for implementing the child's IEP, specifically the accommodations and modifications that must be provided for the child in accordance with the IEP is substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Violations have occurred in the following areas:

1. Federal regulations, at 34 C.F.R. 300.101, require school districts to make a free appropriate public education available to all children residing within

the district. Federal regulations, at 34 C.F.R. 300.17, defines the term "free appropriate public education," in part, as providing special education and related services in conformity with the IEP. Federal regulations, at 34 C.F.R. 300.320(a)(4), requires the IEP to include a statement of the program modifications that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

In this case, the IEP was developed on November 27, 2017 which includes specific accommodations and modifications to be provided for classroom assignments as well as assessments. No documentation was provided to show the required accommodations and modifications were provided in any classes at _____ High School during first semester or in the Earth-Space Science class at Academy during second semester. The documentation provided does show several but not all of the required accommodations and modifications were provided in the other classes while the student was attending _____ Academy during the second semester. Documentation also suggests the classroom teachers did not understand how to provide the accommodations and modifications required by the student's IEP.

2. Federal regulations at 34 C.F.R. 300.323(d), require each public agency to ensure each teacher and provider is informed of his or her specific responsibilities related to implementing the child's IEP; and, of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, USD #___ has policies and procedures in place ensure a student's general education teachers are informed of their specific responsibilities related to implementing the student's IEP including accommodations and modifications. However, USD #___ provided no documentation to show that the student's general education teachers were informed of their specific responsibilities related to implementing the student's IEP, specifically the accommodations, modifications, and support that must be provided for the student in accordance with the IEP dated November 27, 2017.

Based on the foregoing, USD #464 is directed to take the following actions:

1. Within 10 calendar days of the receipt of this report, submit a written statement of assurance to Early Childhood, Special Education and Title Services stating that it will:

   a) Comply with 34 C.F.R. 300.101, 34 C.F.R. 300.17, and 34 C.F.R. 300.320(a)(4) by implementing the IEP as written, specifically the accommodations and modifications required to be provided to each child with a disability as required by the IEP.

   b) Comply with 34 C.F.R. 300.323(d) by ensuring each teacher and provider is informed of his or her specific responsibilities related to implementing the child's IEP; and, of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

2. No later than August 15, 2018, USD #___ shall review their procedures and practices for informing general education teachers of their responsibilities for implementing the IEP and monitoring the provision of accommodations and modifications in conformity with the IEP. USD #___ shall develop a written procedure for monitoring that general education staff have been informed of their IEP responsibilities, understand how to implement these accommodations and modifications in the classroom setting, and are providing the accommodations and modifications as required by the IEP. Appropriate staff will be trained to implement this procedure prior to the beginning of the 2018-19 school year. A copy of this written procedure will be provided to Early Childhood, Special Education and Title Services. In addition, USD #___ will document who provided the training and the content of the training and send that documentation to Early Childhood, Special Education and Title Services.

3. Prior to the beginning of the 2018-19 school year., the IEP team for the student will meet to determine what compensatory services and assessments will be provided to enable the student to have a reasonable opportunity to achieve a passing grade in Modern World History, English Language Arts 10, and any coursework in which the student failed in the

   second semester of the 2017-2018 school-year. These compensatory services must include: (a) any needed additional instruction in the subject areas in which the student failed; (b) using assessments that will permit the student to demonstrate a passing mastery of the subject areas; and (c) if assessments show that a passing mastery of a subject area is achieved, providing a passing mark indicating the grade level achievement indicated

by the assessment results. The parent will be provided prior written notice describing the compensatory services (including assessments) offered. The parent shall have the option of accepting all, part of, or none of the compensatory services and assessments. A copy of the Prior Written Notice and, if necessary, a plan for providing any compensatory services will be provided to Early Childhood, Special Education and Title Services, along with a statement of the portion of the plan for compensatory services,, if any, accepted by the parent.

4. Further, USD #___ within 14 calendar days of receipt of this report, submit to Early Childhood, Special Education and Title Services one of the following:

    a) a statement verifying acceptance of the corrective action or actions specified in this report;

    b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or

    c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51 (f).

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, Landon State Office Building, 900 SW Jackson Street, Suite 620,, Topeka Kansas 66612-1212, within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

_____

Nancy Thomas, Complaint Investigator

(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)