Special Education Formal Complaint Decisions 2021-22

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, 22FC01 signifies a Formal Complaint filed in the 2022 fiscal year (July 1, 2021 to June 30, 2022). The case citation of 22FC02 Appeal Review signifies the decision of the state appeal committee for case number 22FC02. All files are PDF.

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SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 13, 2021

DATE OF REPORT: OCTOBER XX, 2021

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on September 22, 2021. On September 15 and 29 and October 4, 5, and 7, 2021, the investigator spoke via telephone with Dr. JaKyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative. On September 28, 2021, the investigator spoke by telephone with [SM], principal of _____ Middle School.

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

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated September 23, 2019
- Notice of Meeting dated September 12, 2019
- Evaluation/Eligibility Report dated October 4, 2019
- IEP for the student dated October 4, 2019
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated October 4, 2019
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated November 15, 2019

- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated January 7, 2020
- Notice of Meeting dated September 15, 2020
- IEP for the student dated September 30, 2020
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated February 25, 2021
- Email dated March 9, 2021 from an administrative assistant at the middle school to the parent
- Email dated August 18, 2021 from the superintendent to the director of special education et. al.
- Email dated August 18, 2021 from the director of special education to the superintendent et. al.
- Email dated August 18, 2021 from the building principal to the superintendent et. al.
- Email dated September 8, 2021 from the building principal to middle school staff
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated September 14, 2021
- Section of an online district procedures manual related to move-in students https://sites.google.com/site/wycospecialed/

Background Information

This investigation involves a 13-year-old boy who has received special education support since age three. The student was given a diagnosis of spastic quadriplegic cerebral palsy. He is non-ambulatory and has difficulty with upper extremity control and coordination. Abnormal muscle tone associated with his cerebral palsy diagnosis makes volitional movement difficult and makes joint contractures which limit his range of motion. The student relies on others to push his wheelchair for safe mobility in the educational environment.

The student has been diagnosed with Cortical Visual Impairment (a neurological visual impairment), astigmatism, and extropia. An ophthalmologist has recommended that

he wear glasses. In February of 2018, a functional vision assessment determined that the student exhibited at least a 10 second delay for processing visual information. Concerns were also found with regard to pupillary response, convergence, visual fields, muscle imbalance, tracking, scanning, and distance and near acuity.

Early hearing testing with the student indicated flat line response. The student was given a cochlear implant for his right side by the University of Kansas Medical Center and wore it briefly. The parent reports that the implant is no longer worn.

The student needs adult support at all times during his school day and total assistance in all areas of daily living. He wears diapers and is checked and changed in the school setting every 2 hours. In the school setting, the student is tube fed twice per day at approximately 8:00 AM and 12:00 PM. He has a trach which needs to be suctioned as needed throughout the school day.

During the 2020-21 school year, the student received the following special education services:

- 425 minutes of nursing care as a special education service four day a week;
- 395 minutes of nursing care as special education service one day a week;
- 88 minutes of inclusion support for electives in the general education setting four days a week;
- 60 minutes of inclusion support for electives in the general education setting one day a week;
- 317 minutes of direct life skills instruction in a special education setting one day a week;
- 337 minutes of direct life skills instruction in a special education setting three days a week;
- 90 minutes of direct life skills instruction in the special education setting one day a week;
- 20 minutes of physical therapy in a special education setting two days a week;
- 15 minutes per quarter of consultative occupational therapy;
- 15 minutes per semester of consultative deaf/hard of hearing services;
- 15 minutes per quarter of consultative speech/language services; and
- 20 minutes a month of consultative adaptive physical education support.

The student was to receive transportation services each day the school was in session on a special education vehicle. The student was to have nursing support on the bus each time the student was transported.

The student's September 30, 2020 IEP included an Individualized Health Care Plan which called for twice daily tube feeding, trach suctioning, management of a gastrointestinal tube and mickey button malfunctions, diapering/changing throughout the school day, and implementation of a health crisis plan should the need arise.

The September 2020 IEP also stated that the student needed to be taken from his wheelchair and stretched on a floor mat, placed in a supine stander or held in the nurse's lap at least 25 minutes each morning and 25 minutes each afternoon. Any newly introduced staff member was to receive thirty minutes of lift/transfer training to ensure that the student could be repositioned safely.

Issue

In her complaint, the parent alleges the following:

> The district has failed to provide nursing services that would allow the student to attend school. As a result, the student has received none of the special education services required by his current IEP.

Applicable Statutes and Regulations

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 individualized education program (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 34 C.F.R. 300.323(e), (f), (g)).

When a child with an exceptionality transfers into a new school district in Kansas, with a current IEP from a previous school district in Kansas, the new school district, ***in consultation with the parents***, must provide a free appropriate public education (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. 72-3430(b)(6)).

State regulations, at K.A.R. 91-40-16(b)(3), require districts to have an IEP in effect for each exceptional student at the beginning of each school year. At K.A.R. 91-40-19(a), state regulations also require that each school district, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP.

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). Neither federal nor state statutes or regulations give the parent the right to select the teacher or other special education service provider assigned by a district to work with their child. However, it is the responsibility of the district to ensure that the individuals who are employed to provide special education services to a student are able to deliver the services specified in the student's IEP.

Parent's Position

The parent asserts that the district failed to proactively communicate with her regarding a transition plan for the student and did not provide her with any information regarding nursing services for the student until the night before school started.

District's Position

It is the position of the district that it is ready, willing, and able to provide in the middle school setting all of the special education services specified in the student's September 30, 2020 IEP. The district agrees that the student is unable to attend school in the absence of one-on-one nursing services but contends that a nurse was available to provide services to the student on his first day of school. It is the district's position that it was the choice of the parent to keep the student at home. The district asserts that it has attempted to employ the nurse who worked with the student in his previous district or to secure a nurse through any agency the parent deems acceptable so that the student can come to school. The district further asserts that it has offered to provide homebound services to the student until he returns to school, but the parent has opted not to accept the district's offer.

Investigative Findings

In February of 2021, the student's family purchased an unfinished home in the district. On March 9, 2021, the parent called the middle school serving her new neighborhood to give notice that the student would be transferring into the district for the 2021-22 school year. The parent spoke with an administrative assistant/athletic secretary at the school who sent a follow-up email to the parent on that same date which included a release of information form.

The "SPED COOP Handbook" which outlines special education procedures for the district states that a school psychologist is to take the following actions when a student moves into the district:

- Review the Student Services section of the application completed by the parent under Person Documents in Infinite Campus to determine if the parent reported the student has an IEP.
- Call the last school of attendance to obtain verbal confirmation of services and placement.
- Email all service providers, Teacher Leader (secondary only), and School Counselor (secondary level for scheduling) outlining services to provide; services will start immediately.
- Email copies of IEP to all service providers upon receipt of records.
- Complete and mail [to the parent] a Prior Written Notice for Services and Placement outlining the comparable services from the previous IEP that will be provided. Give a copy of the Prior Written Notice for Services and Placement outlining the comparable services from the previous IEP to the case manager.
- Email the following documents to the appropriate MIS Data Assistant for processing and linking:
    - Evaluation Report, IEP and Prior Written Notice for Services and Placement outlining the comparable services from the previous IEP that will be provided.
- Email the case manager and related service providers, if applicable, that within 40 school days, by the annual review date if it expires before the 40 school days, or immediately if the IEP is expired that an IEP must be written and a meeting held following the annual IEP review process.

According to the building principal, the school psychologist sent the parent a second release of information form on or around April 22, 2021. The parent reports that she provided the district with a signed release of information and orders for care from the student's doctor.

The parent also reports that she and the administrative assistant/athletic secretary spoke again in April 2021. The parent states that, during this second phone call, she provided contact information for the nurse who had been providing school-based support for the student during the 2020-21 school year. The parent reports that she told the administrative assistant/athletic secretary that the nurse had expressed strong interest in following the student to his new school.

On May 24, 2021, the administrative assistant/athletic secretary sent the parent an email asking whether the nurse was an employee of the student's then current school district or an employee of an agency contracted by that district to provide nursing services for the student.

According to both the parent and the district, there was no further contact between the parties until the end of July 2021. The school psychologist who sent the parent a release of information form in April 2021 ended her contract and left the district in early June 2021. A replacement school psychologist hired by the district through a placement agency began work on August 13, 2021. The special education coordinator who had been assigned to work with the middle school also left the district on July 1, 2021.

No evidence was provided by the district to show that either the school psychologist who contacted the parent in April 2021 or the school psychologist who began working in the district in August 2021provided the parent with prior written notice of the district's plan to provide services comparable to those listed in the student's September 30, 2020 IEP.

On July 29, 2021, the parent sent the administrative assistant/athletic secretary a copy of her application for a change of address for a new driver's license as proof of residence in the district. The parent also provided a copy of immunization records from the student's physician. The parent completed a form enrolling the student in the district for the 2021-22 school year on July 29, 2021.

On August 13, 2021, the parent sent an email to the administrative assistant/athletic secretary asking "Do you know why they have not reached out to the nurse for [the student] yet?"

According to the executive director of special education, contact was made with the nurse who had served the student in the previous district, but, at that time, that nurse

declined to transfer with the student. It is the position of the parent that the nurse was reluctant to take the new position because she did not want to abandon the previous district so close to the start of the new school year.

According to the director, the district decided to put a "temporary" nurse in place for the student while contract agencies engaged in further discussion with the nurse who had been serving the student in his previous district. If it became clear that the student's former nurse was unavailable, the district would then search for another nurse to fill the position on a permanent basis.

On August 18, 2021, at 1:37 PM, the district's superintendent sent an email to the executive director of special education, the special education coordinator for the middle school, and others stating

> We are needing to prepare for [the student] arriving at [the middle school] tomorrow. At this point in time, mom is saying that if they don't have the nurse from [the previous school district], she will not send [the student] to school. However, we know by law, that we need to be prepared to educate the student otherwise it legally puts both the COOP and [the school district] in harm's way. (We have told the mother to have his current nurse apply with the agency.)
>
> Please find below the information a temp nurse will need for tomorrow:
> - Report time 6:40 AM at the student's home
> - Support during the day
> - Student loads bus at 2:10
> - Should arrive home between 2:20 and 2:30
> - Skills: Run a trach and administer his tube feeds
> - IEP Health Plan will be provided in the morning at [the middle school]

At 1:59 PM on August 18, 2021, the executive director of special education sent an email to the head of nursing services for the district, copying the superintendent and others. The director wrote "Can you please let us know who we can get to [the middle school] tomorrow. We will have to use agency (sic) we are not able to do direct hire."

At 6:40 PM, the principal of the middle school sent an email to the superintendent, copying the director and others. The principal wrote

> I apologize for the late email. I was able to speak with [the parent] over the phone about 5:45. I shared that a temp nurse would arrive at her home at

> roughly 6:45. The bus would arrive at 7:00. [The parent] is not accepting this plan. She is not comfortable with a nurse that does not know her son being charged with her son's care. [The parent] does not want the nurse showing up at her home. It is her intention to keep [the student] home.
>
> The boy's nurse for the last 4 years is [nurse's name.]. Does anyone know the name of the company that I could offer to [the parent]. She can alert [the nurse] where to apply. I am not sure if that is the answer to the problem; there is no guarantee that [the nurse] would be hired. I explained that to [the parent].
>
> Can someone call off the temp nurse for tomorrow? The mom is not accepting this temporary plan.

The student remained at home on the first day of school and no special education services were provided.

On September 8, 2021, the building principal sent an email to the special education coordinator, school psychologist, assistant principal, and others stating that he had spoken to the parent who had agreed to meet with school staff on September 14, 2021. According to the executive director and the principal, there had been no other meetings with the parent since the start of the school year on August 19, 2021.

Those present at the September 14, 2021 meeting included the building principal, an assistant principal, the special education coordinator, a physical therapist, the parent and the student. The district provided the parent with prior written notice of a proposal for "getting [the student] started in school." The district proposed that the student be provided with 45 minutes of service four days a week in "the homebound format…with specific time scheduling coordinated between the parent and service providers." According to the prior written notice document this action was proposed because the student required

> 1:1 nursing care in order to access his special education services in the regular school setting. Due to a lack of nursing staff, he has been unable to attend in the school setting. Compensatory services are needed to make up lost service time beginning from the first day of school 8/19/21. Until a nurse is hired and [the student] is able to begin attending school, homebound services will be provided.

The services proposed in the prior written notice form were to begin on September 20, 2021, but the parent did not agree to the implementation of the district's proposed plan. The student remained at home. No special education services were provided by the district, and no changes were made to the student's IEP.

The executive director of special education continued to reach out to the parent to try to find a way to get the student in school. The district contacted a nursing placement agency that was preferred by the parent but was unable to secure a nurse through that agency. The district was able to secure a nurse through a different agency, but the parent was unwilling to accept a nurse from that agency.

The parent told both the director and the investigator that having someone come to the house to provide direct life skills instruction was not necessary and could be inconvenient. The parent asked the district not to send anyone to the home although she did express interest in having the district provide physical therapy (PT) services to the student. The district has attempted to secure a PT through a contract agency and has interviewed potential candidates. Most of those interviewed were not willing to go to the student's home.

An annual IEP meeting for the student was held on Tuesday, September 28, 2021.

The district continued to try to employ a 1:1 nurse for the student using the placement agency preferred by the parent as well as other agencies considered "acceptable" by the parent. Ultimately, the nurse who had worked with the student in his previous district was hired by one of these agencies and was initially scheduled to begin work in the district on October 11, 2021 at which time the parent says she would allow the student to come to the middle school. The start date for the nurse was subsequently delayed until October 20, 2021. The parent has opted to have no services in the home until the student returns to school.

Summary

The parent contacted the district in March 2021, soon after the family had purchased a home in the district, and spoke with an administrative assistant/athletic secretary at the middle school the student would be attending for the 2021-22 school year. A release of information form was sent to the parent at that time and again in mid-April. The parent provided the district with contact information regarding the nurse who was at that time providing support to the student in his then current district and informed the district that the nurse was interested in following the student when he moved.

There was no contact between the parent and the district between the end of May and July 29, 2021 when the parent completed the student's enrollment. The parent was not provided with prior written notice of the district's plan to provide services comparable to those specified in the student's September 30, 2020 IEP. On the evening of August 17, 2021, the principal of the middle school called the parent to let her know that a nurse would be arriving at the student's home in the morning to ride the bus with the student for his first day of school. The parent told the principal that this arrangement was unacceptable to her because she did not want the student to be served by someone who was unfamiliar with his needs. The student remained at home with no services.

On September 14, 2021, the parent and student came to the school for a meeting with the building principal, an assistant principal, the special education coordinator, and a physical therapist. The district proposed that the student be provided with services in the home, but the parent did not want that service.
The district continued to try to find a way for the student's former nurse to be employed or to find another nurse through a placement agency the parent considered acceptable. The district also continued to try to hire a PT to provide in-home services to the student. The student's former nurse is now scheduled to begin work in the district on October 20, 2021, at which time the parent has indicated she will allow the student to come to school.

Conclusions

It is clear that the decision to keep the student at home was made by the parent. The district stood ready, willing, and able on the first day of the school year to provide the special education services – including nursing services – called for in the student's September 30, 2020 IEP.

Special education statutes and regulations do not give the parents the right to choose who will be providing special education and related services to their child. Rather, it is the responsibility of the district to recruit, hire and train qualified personnel to provide special education and related services to children with disabilities and to ensure that the individuals who are employed to provide services are able to deliver the services specified in a student's IEP. The parent does not allege that the middle school staff was unable to provide services called for in the student's September 30, 2020 IEP. The parent did not allege that the nurse who was scheduled to work with the student was unqualified or lacked the necessary training to provide the services he required.

Rather, the parent asserts that the nurse was unfamiliar with the student, and the parent did not feel comfortable sending her son to school.

Evidence shows that the district's transition of the student did not follow the procedures outlined in its own special education handbook. The parent was not provided with prior written notice of the district's decision to provide the student with comparable services to those outlined in the IEP developed by his previous district. This inconsistency with district procedures did not result in a violation of law because the law does not require the district to issue a prior written notice when it is not proposing to make any change to an IEP.

However, the law does require the district to consult with parents of children who are moving into the district about how it will provide comparable services. The first meeting with the parent to discuss services for the student was held on September 14, 2021. There is no record of <u>any</u> "consultation with the parent" prior to the start of school about how services would be provided nor any record of an attempt by the district to address the issue of nursing services, a clear concern of the parent. Had that consultation actually taken place and had the parent been informed of the district's plans for providing services to the student, this complaint might never have been filed.

Because the district failed to consult with the parent regarding the provision of a FAPE to the student upon his transfer into the district, a violation of special education statutes and regulations has been identified.

<u>Corrective Action</u>

Information gathered in the course of this investigation has identified noncompliance with special education statutes and regulations. Specifically, a violation was identified with regard to K.S.A. 72-3430(b)(6) which requires districts to consult with parents when making decisions regarding the provision of FAPE to students who move into a Kansas district with an active IEP from another Kansas district.

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

1) Submit to Special Education and Title Services (SETS), within 40 days of the date of this report, a written statement of assurance stating that it will comply with K.S.A. 72-3430(b)(6) by consulting with parents when making decisions regarding the provision of FAPE to students who move into the district with an active IEP.

2) a) Within 40 days of the date of this report, USD #___ shall review and, as needed, revise the district's procedure for the management of student transfers when the transferring student has active IEP. The plan should include adequate steps to ensure that the transfer process for a student is completed even when there is a change in staff. The district shall then develop and submit to SETS for review and approval a plan for training of special education staff regarding these procedures.

   b) Once the training plan described above under Corrective Action 2)a) has been approved by SETS, USD #___ must implement that training within 30 school days after SETS approval.

3) No later than 5 school days before implementing the approved training plan described in Corrective Action 2 above, the executive director of special education of the Wyandotte Comprehensive Special Education Cooperative and the administrator of the student's school shall complete and submit to SETS a pre-training administrator survey.

4) No later than 5 school days after implementing the approved training plan described in Corrective Action 2 above, every staff member who participated in the training shall complete and submit to SETS a post-training staff survey. The TASN GSTAD Assistant Director will provide the survey and further instructions in a follow-up communication with the district's Director of Special Education.

5) No later than 40 days after the date of this complaint, USD#___ shall submit to SETS for review and approval a plan for the delivery of 200 minutes of compensatory PT services to this student. These compensatory services are not intended to compensate the student for services missed because the parent opted to keep the student at home but because the first consultation with the parent regarding the provision of a FAPE to the student was conducted on September 14, 2021. The parent has told both the district and the investigator that she considers PT the most essential service for the student. The 200 minutes specified in this Corrective Action reflect PT services that would have been provided had the student been in school between August 18 and September 14, 2021.

   Within 10 school days of the date the plan for compensatory services has been approved by SETS, the district shall present the plan to the parent who will have

the option of either accepting the plan as written, or accepting a portion of the plan, or rejecting it.

Within 5 school days of the date the plan is presented to the parent, USD #___ must notify SETS of the parent's decision to accept or reject the plan.

6) Further, USD #___ shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing

a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 1, 2021

DATE OF REPORT SEPTEMBER 30, 2021

This report is in response to a complaint filed with our office by_____, mother, 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 mother" or the "the parent."

The complaint is against USD #___ (_____ Public Schools). In the remainder of the report, USD #___ may be referred to as the "school," the "district" or the "local education agency (LEA)."

The Kansas State Department of Education (KSDE) received the complaint on September 1, 2021. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on October 1, 2021.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on September 3 and September 17, 2021 as part of the investigation.

[AJ], Executive Director of Special Services at USD #___, was interviewed by telephone on September 3, 2021. USD #___ made the following school staff available for a telephone interview on September 17, 2021:

- [DC], Assistant Director of Special Services
- [GM], _____ South High School Assistant Principal
- [BH], _____ South High School Administrative Intern and 504 Coordinator
- [CH], _____ South High School Counselor
- [MJ], _____ South High School Special Education Resource Teacher and 504 Coordinator

In addition, [JS], _____ South High School Psychologist, was interviewed on September 20, 2021.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Student's Enrollment Packet for USD #___ dated July 22, 2021
- Email dated August 13, 2021 at 9:33 a.m. from [CH], Counselor, to the parent
- Email dated August 13, 2021 at 11:13 a.m. from the parent to Mr. [H]
- Email dated August 13, 2021 at 12:09 p.m. from Mr. [H] to the parent
- Email dated August 13, 2021 at 6:21 p.m. from the parent to Mr. [H]
- Email date August 16, 2021 at 7:08 a.m. from [BH], Administrative Intern and 504 Coordinator, to the parent
- Email date August 16, 2021 at 8:30 a.m. from the parent to Mr. [H]
- Notes of the August 16, 2021 phone call to the parent at 1:10 p.m. written by [JS], School Psychologist
- Email dated August 16, 2021 at 1:34 p.m. from Ms. [S] to Mr. [H], Mr.[Ho], and [GM], Principal
- Zoom meeting invitation dated August 17, 2021 at 7:01 a.m. from Mr. [H] to the parent and school team with a link to a meeting scheduled for August 19, 2021 at 1:45 p.m.
- Email date August 17, 2021 at 8:35 a.m. from the parent to Mr.[H], Mr.[Ho], and Ms. [S]
- Attachment to the parent's August 17, 2021 email titled *List of Accommodations / Modifications to Discuss*
- Attachment to the parent's August 17, 2021 email titled *Sensory Processing Questionnaire*
- Email dated August 18, 2021 at 8:42 a.m. from the parent to Mr. [Ho]
- Email dated August 18, 2021 at 10:43 a.m. from Mr. [Ho] to the parent
- Email dated August 20, 2021 at 8:04 a.m. from the parent to Mr. [Ho] and [MJ], Special Education Teacher and 504 Coordinator
- Email dated August 20, 2021 at 11:40 a.m. from Ms. [J] to the parent

- Email dated August 20, 2021 at 1:28 p.m. from the parent to Ms.[J], Mr.[Ho], and Ms. [S]
- Email dated August 20, 2021 at 3:20 p.m. from the parent to Mr. [Ho]
- Email dated August 23, 2021 at 8:58 a.m. from Mr. [Ho] to the parent
- Email date August 23, 2021 at 9:52 a.m. from the parent to Ms. [J] and to Mr. [Ho]
- Email dated August 30, 2021 at 6:57 p.m. from the parent to Ms. [J], Mr.[Ho], and Ms. [S]
- Email dated August 31, 2021 at 7:07 p.m. from Ms. [J] to the parent
- Email dated August 31, 2021 at 10:08 p.m. from the parent to Ms.[J], Mr. [Ho], Ms.[S], and Mr. [M]
- USD #___ Response to the Allegations dated September 12, 2021
- USD #___ School District Calendar for the 2021-22 school year

Background Information

This investigation involves a 15-year-old male student who is enrolled in the ninth grade at _____ South High School in USD #___ for the 2021-22 school year. The parent reports the student was originally evaluated in the second grade while attending school in Oklahoma and found eligible for special education services under the exceptionality category of gifted. The parent revoked consent for special education services when the student was in fourth grade. The student last attended USD #___ during fifth grade at Briarwood Elementary School and for sixth grade at Frontier Trails Middle School. The parent stated that the student attended seventh grade in Spring Hill Public Schools (USD #230) through an online instruction program. Last school year, the student was enrolled in the eighth grade at Wheatridge Middle School in Gardener-Edgerton Public Schools (USD #231). The parent reported the student was referred to the building's student intervention team towards the end of that school year.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the mother raised one issue that was investigated.

> ISSUE ONE: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to a parent request for a special education evaluation during the 2021-22 school year.

Positions of the Parties

The parent believes that USD #___ failed to respond to her request for a special education evaluation for her son during the 2021-22 school year. She reported that she told school staff that the student would need a building success plan or 504 plan prior to the beginning of the school year and that she sent an email to multiple school staff on August 17, 2021 indicating that her son may need an IEP. The parent believes that any mention of an IEP from a parent should be considered a parent request for a special education evaluation for the student. She indicated that school staff were aware of her concerns as well as his medical conditions and therapy but failed to initiate a special education evaluation. The parent stated that she requested a meeting with school staff to discuss her concerns three different times in less than five days before a meeting was finally held on August 19, 2021. The parent believes the district's failure to respond appropriately has resulted in her son not being provided with the services and supports he needs to be successful in school.

USD #___ reported the parent first requested a meeting to discuss her concerns about her son in a conversation with [GM], _____ South High School Assistant Principal, during freshman orientation on August 9, 2021. The LEA staff stated that the parent sent an email on August 17, 2021 which included an attachment titled "Accommodations/Modifications to Discuss." In that email, the parent stated:

> I have now determined assessment for an IEP may be needed if the list of accommodations/modifications is beyond what your building is open to under a 504.

A meeting to discuss the parent's concerns was held on August 19, 2021 and the parent's list of accommodations/modifications was reviewed. As a result of the

meeting, a plan was developed to implement accommodations/modifications in the classroom while pursuing a Section 504 evaluation. The district noted that parent did not request an evaluation for special education at the meeting.

USD #___ reported that school staff had no reason to believe the parent was requesting a special education evaluation until she filed the complaint on September 1, 2021. The LEA stated:

> [The] Parent has never requested a special education evaluation from the District. In fact, she has stated on multiple occasions verbally and in writing the opposite, that she did not want a special education evaluation and only wanted to pursue a Section 504 evaluation.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #___.

_____ South High School Freshman Orientation was held on Monday, August 9, 2021. The first day of school for USD #___ was a half-day on Thursday, August 12, 2021 with Friday, August 13, 2021 being the first full day of school. Due to a dental procedure, the student's first day of school was Monday, August 16, 2021.

The parent and Mr. [M], Assistant Principal, verbally discussed the parent's concerns at the _____ South High School Freshman Orientation on Monday, August 9, 2021.

Mr. [Ho], School Counselor, contacted the parent on Friday, August 13, 2021 via email at 9:33 a.m. indicating that Mr. [M] had made him aware of the parent's concerns and requested the parent contact him to discuss the situation further. The parent responded via email at 11:13 a.m. stating:

> On a side note, I should have done this a year ago but all grades have been promoted until now. We need to get a building success plan or 504 in place for him as soon as possible or y'all will have a trainwreck in front of you. That is honestly my greatest concern. How soon can a meeting be scheduled? Also, can you send the release of the information form so I sign that for the student's psychologist and medical provider?

At 12:09 p.m. on August 13, 2021, Mr. [Ho] replied via email to the parent and indicated the he was making the building nurses and the 504 coordinators aware of her concerns and that they would be assisting with her requests.

[BH], Administrative Intern and 504 Coordinator, emailed the parent on Monday, August 16, 2021 at 7:08 a.m. to ask for clarification regarding her request for a meeting and the release of information form. Mr. [H] also requested more information about the student. Mr. [H] provided information about 504 plans and IEPs to try to clarify what the parent was requesting. Mr. [H]stated:

> What is the student's disability? That will help us determine which direction we need to move. Regardless, there is a 60 day evaluation period where we collect data to figure out what is best for him. Let me know and I will follow up with the appropriate people.

The parent responded via email at 8:30 a.m. reiterating that she was requesting a Release of Information form as well as a meeting to discuss "the best steps to be taken for my child".

[JS], School Psychologist, called the parent at 1:10 p.m. on August 16, 2021. Notes from that phone conversation reflect that the student has anxiety, autism, a mood disorder, and some motor tics; that the student is seeing a therapist from the Joshua Center; that the student was previously in a gifted program and has poor interpersonal skills; and that the student doesn't like school and doesn't do assignments but gets A's on tests. The notes also state, "Parent is interested in a 504, doesn't want an IEP because she feels that he does not need direct intervention."

Following her telephone conversation with the parent, Ms. [S] sent an email at 1:34 p.m. to Mr.[H], Mr. [Ho], and Mr. [M] to clarify the parent's meeting request and stated:

> I just spoke with the student's mother. I think I alleviated her confusion and got down to what she was wanting. Basically, she was speaking of a release of information for us to communicate with his outside therapist. He speaks with a therapist every other week at the Joshua Center. I will be sending her a release electronically. She also gave me information on what was going on with him such as anxiety, autism, and mood disorders. She

> specifically is wanting a 504 because she feels like direct instruction is not necessary. He is according to her, gifted academically and doesn't need any interventions. But he has a negative view of school and doesn't always complete his work. She said he does very well on tests though, which according to her frustrates teachers. She wants to meet to put a 504 plan in place with accommodations such as a quiet, separate setting for tests. She doesn't know what else, but wants to discuss with the team. I told her that Brett [Mr.[H]] would reach out regarding the 504.

At 7:01 a.m. on Tuesday, August 17, 2021, Mr. [H] sent a Zoom meeting invitation to the parent and the school team of Mr. [M]; Ms. [S], Mr.[Ho]; [EC], Assistant Principal; and Melissa[J], Special Education Teacher and 504 Coordinator. The Zoom meeting was scheduled for September 19, 2021 at 1:45 p.m.

On August 17, 2021 at 8:25 a.m., the parent emailed Mr.[H], Mr. [Ho], and Ms. [S] and stated:

> I am attaching a Sensory Processing Questionnaire as well as a list of accommodations/modifications to discuss. After speaking with both the student and Kris [Kris Martin, Therapist at the Joshua Center], I have now determined assessment for an IEP may be needed if the list of accommodations/modifications is beyond what your building is open to under a 504. As I said Jenny, I really can't identify a need for direct instruction and I believe there would be a real struggle for goal creation. Possibly executive functioning, social skills, and/or interpersonal skills. He does not have any academic deficits."

The team met on Thursday, August 19, 2021 at 1:45 p.m. via Zoom regarding the student. Participants in the meeting included the parent, the student, Mr. [H], Ms. [J], Mr. [M], Ms. [C], Ms.[S], and Mr.[Ho]. Neither school staff nor the parent provided the investigator with any notes from this meeting.

The school staff reported that the team reviewed and considered the parent's list of proposed accommodations, agreed that all of the accommodations proposed were reasonable, and reached consensus that eight of them should be put into place immediately as part of a general education Student Intervention Plan. The

accommodations would be implemented until the 504 initial evaluation could be completed, eligibility determined, and, if eligible, a 504 plan developed.

The school staff indicated that the parent fully participated in the meeting and agreed with the team's decision. The school team also noted that the student provided input during the meeting and believed the selected accommodations would be helpful. The school staff reported the parent stated that she felt that an IEP would not be necessary and that the student was not interested in gifted education services during the team meeting.

The parent reported that Ms. [S] facilitated the meeting and that the team did review and discuss the list of accommodations/modifications she had provided in her email. She acknowledged that the team chose several of the accommodations/modifications from the list to be implemented in the school setting.

On August 20, 2021at 11:40 a.m., Ms. [J] emailed the parent with a synopsis of the team meeting and stated:

> I am the student's 504 Case Manager, [MJ], please feel free to contact me with any questions or concerns. During the evaluation process the following accommodations will be provided for the student while in the school setting:
>
> 1. Leave class early to avoid hallway congestion – 2 minutes
> 2. Alerts when there is an assembly or drill
> 3. Shortened assignments to the essential elements
> 4. Able to type assignments
> 5. Copy of teacher notes when requested
> 6. Break during class (towards the middle of the class period)
> 7. Hot Pass to go to safe person/space if necessary
> 8. Access to the testing center to provide a quiet non-competitive setting for tests or quizzes
>
> I will be requesting information from teachers and the student periodically during the evaluation process to assess these accommodations. We can change, add, or reduce accommodations during the evaluation process as needed to ensure we have the best plan for the student in place.

The parent acknowledged receipt of this email at 1:28 p.m. on Friday, August 20, 2021by thanking Ms. [J] and indicating she planned to make a copy of the email for the student.

On Monday, August 30, 2021, the parent sent an email to Ms. Jaeger at 6:57 p.m. expressing a concern that the accommodations were not being provided to the student. The parent then stated:

> I'm also questioning the need to take all of your 60 days for a medically documented disability that substantially impacts the student. How long will you let him fail before you intervene?

On Tuesday, August 31, 2021 at 7:07 p.m. Ms. [J] emailed the parent to respond to her concerns. Ms. [J] stated:

> As part of the 504-evaluation process, I request data on accommodations usage from all of the student's teachers and support team on a regular basis. The accommodations we have listed are being offered to the student daily. The major factors impacting the student's grades is his attendance and sleeping in his classes. He has missed 50% of the school days and this reflects in his grades. I know his teachers are working with him to catch up on missing work and he has access to our all-school academic intervention time (A.I./Advisory on our schedule) to receive help from any of his teachers as requested. The student has gone to see his counselor two times since our last Zoom meeting. Since the student has a hot pass to see his counselor, and this is an intervention offered to all students, we did not include it on his list of accommodations. Please encourage him to use this support as needed. Over the remaining evaluation days, I will continue to collect data and monitor the student's progress. We have contacted the health professionals you signed releases for us to obtain medical records vital to our evaluation and have yet to receive correspondence.

August 31, 2021 at 10:08 p.m., the parent replied to Ms.[J]' email and stated:

> Nothing you are saying is supporting that he does not have a disability. If you would complete due diligence and speak to his medical providers as well as take my input you would recognize everything you stated are direct

impacts of his disabilities and your team's inability to provide any support. I do appreciate your documentation of negligence in the matter.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.311 111(a) and Kansas state Board of Education regulations at K.A.R. 91-40-7 require each school districts to adopt and implement policies and procedures to identify, locate, and evaluate all children with disabilities exceptionalities residing in its jurisdiction who need special education and related services. Special education means specially designed instruction which is adapted, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction (34 C.F.R. 300.39(a)(1), (b)(3); K.A.R. 91-40-1(kkk), (lll)).

Federal regulations implementing the IDEA at 34 C.F.R. 300.301(b) allows either the parent of a child or school district to initiate a request for an initial evaluation to determine if a child is eligible for special education and related services. State regulations at K.A.R. 91-40-7(c)(3) allows a school district to refer a child for a special education evaluation if the parent requests, and give written consent for, an evaluation of the child, and the school district agrees that an evaluation is appropriate..

In this case, the parent shared her concerns with school staff prior to the beginning of the school year on Monday, August 9, 2021 and initially requested a meeting with school staff. The parent continued to share her concerns and to request a meeting through subsequent emails dated between Friday, August 13, 2021 and Monday, August 16, 2021 as well as in a telephone call with the school psychologist on August 16, 2021.

Documentation shows that on Friday, August 13, 2021 at 9:33 a.m., the parent stated, "We need to get a building success plan or 504 in place for him as soon as possible." The notes from the August 16, 2021 telephone call between the parent and the school psychologist at 1:10 p.m. include the statement "Parent is interested in a 504, doesn't want an IEP because she feels that he does not need direct intervention." An email synopsis of that telephone call sent to school staff on August 16, 2021 at 1:34 p.m. by the school psychologist stated, "She wants to meet to put a 504 plan in place with accommodations such as a quiet, separate setting for tests."

On Tuesday, August 17, 2021, the parent provided USD #___ with a document titled *List of Accommodations / Modifications to Discuss* in an email. The parent contends that she requested an initial special education evaluation in that email by stating:

> After speaking with both the student and Kris [Kris Martin, Therapist at the Joshua Center], I have now determined assessment for an IEP may be needed if the list of accommodations/modifications is beyond what your building is open to under a 504.

However, the parent's statement only indicates that parent wanted to pursue an assessment for an IEP if the list of accommodations/modifications could not be provided through a Section 504 Plan. School staff held a meeting to review the parent concerns and the list of accommodations/modifications on Thursday, August 19, 2021 which was 10 days from the date of the parent's initial request for a meeting and was during the student's first week of the new school year. Interviews found that the list of accommodations/modifications was reviewed and discussed at the August 19, 2021 meeting by the parent, the student, the two 504 coordinators, two assistant principals, the school psychologist, and the counselor.

An email synopsis of the meeting dated Friday, August 20, 2021 documented that the team reviewed and considered the parent's list of proposed accommodations, agreed that all of the accommodations proposed were reasonable, and reached consensus that eight of them should be put into place immediately as part of a general education Student Intervention Plan. The accommodations were to be implemented until the 504 initial evaluation could be completed, eligibility determined, and, if eligible, a 504 plan developed.

Based on this information, USD #___ reasonably determined that the parent was not requesting a special education evaluation at this time because the parent had stated she only wanted to pursue an IEP for the student IF the list of agreed upon accommodations could not be provided under a 504 plan. In this case, as a result of the August 19, 2021 meeting, mutually agreed upon accommodations were being provided and the student was being evaluated for eligibility for a Section 504 Plan.

In addition, there is no evidence before the investigator to indicated that USD #___ had reason to suspect that the student was in need of special education services / specially

designed instruction because of a disability; thus USD #___ had no reason or obligation to refer the student for an initial special education evaluation when the parent filed the child complaint with KSDE on September 1, 2021. The student's first day of school at _____ South High School was on Monday, August 16, 2021. There had only been a total of 12 days of school as of the filing of this complaint (Wednesday, September 1, 2021), of which the student had been absent a total of 50% of the time. The district was already providing the agreed upon accommodations in the school setting as general education interventions and was pursuing a Section 504 evaluation. In addition the student's teachers were working with the student to catch up on missing work during the all-school academic intervention time.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to respond appropriately to a parent request for a special education evaluation. In addition, a violation of special education statutes and regulations is not substantiated for failing to initiate an agency referral for an initial special education evaluation in this case.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 20, 2021

DATE OF REPORT: OCTOBER 20, 2021

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

Investigation of Complaint

On September 24 and October 6 and 19, 2021, the complaint investigator spoke via telephone with DC, Assistant Director of Special Services for USD #___. The investigator spoke by telephone with the parent on October 8, 13, and 15, 2021.

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

- IEP Progress Report for the student for the 2018-19 school year
- IEP for the student dated May 2, 2019
- Attendance record for the student for the 2019-20 school year
- Notice of Meeting dated January 13, 2020
- Notice of Meeting dated March 20, 2020
- IEP for the student dated April 21, 2020
- Email dated August 29, 2020 from the parent to KSD staff
- Email dated September 12, 2020 from the parent to KSD staff
- Email dated September 23, 2020 from the parent to the KSD head teacher
- Email dated September 24, 2020 from the parent to KSD staff
- Email exchanges dated September 28 and 29, 2020 between the head teacher, the parent, and other KSD staff
- Email exchange dated September 30, 2020 from the head teacher to the parent

- Notice of Meeting dated October 5, 2020
- Email dated October 5, 2020 from the head teacher to the parent
- Notice of Meeting dated October 5, 2020
- Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change of Placement and Request for Consent dated October 15, 2020
- Draft IEP for the student dated April 15, 2021
- Progress Report covering the period of May 21, 2020 through April 14, 2021
- Statement dated October 14, 2021 from the nurse at KSD
- Statement dated October 14, 2021 from the administrative assistant at KSD
- Daily schedule for the student for the 2021-22 school year
- Email exchanges between the parent and KSD staff throughout the 2020-21 school year

Background Information

This investigation involves a nine-year-old girl who is enrolled in the third grade in a state-supported school for the deaf located in her home town. In her complaint, the parent describes the student's disabilities as follows:

- Hearing impaired;
- language delay (in American Sign Language or ASL);
- speech impaired;
- multiple physical disabilities related to a rare genetic mutation that caused abnormal brain and nerve system development;
- an inability to drink liquids and speak;
- less than normal balance;
- weak muscles so that she needs ankle braces;
- past joint dislocations of the elbow, shoulder, and hips;
- delayed nerve responses resulting in delayed pupil dilation and contraction, delayed sweat response, and chronic constipation and digestion issues resulting from a "slow gut;"
- bleeding disorder; and
- limited time for productive energy before needing to rest.

By report of the parent, the student's disability has a profound impact on her energy level and her capacity for sustained engagement in the school setting. While the parent strongly asserts that she wants to have the student in school,

surgeries and other medical interventions have caused the student to be absent for extended periods. Additionally, the parent states that she recognizes that the student has often arrived at school late but insists that these late arrivals result from the parent's desire to have the student in the best possible situation to be able to learn. According to the parent, complications related to the student's condition often keep the student from sleeping and waking on a regular schedule. Personal care can take more time than anticipated, and problems often arise unexpectedly with resulting delays.

The student began receiving special education services at the preschool level in Missouri. According to the parent, the family moved into the district so that the student could attend the Kansas School for the Deaf (KSD), a special day school within district boundaries. The student has attended the state school since the 2015-16 school year, assigned to early childhood classes from the time of her entrance through the 2016-17 school year. For the next four years, the student was enrolled full time in the Center Based Program (CBP) classroom.

In the fall of 2020, the student's classroom assignment changed, and the student and her full time paraeducator moved into the 1st-2nd grade classroom. Because of COVID pandemic guidelines, students did not move between classrooms during the 2020-21 school year.

Currently, COVID restrictions on student movement in the school setting have eased, and the student now splits her day between two classrooms spending the mornings in the CBP classroom and afternoons in the 3rd grade classroom. She arrives at school at 8:30 AM and spends from 8:30 to 11:30 AM in the CBP classroom. She has lunch and recess from 11:30 until 12:30 PM when she joins the 3rd grade classroom. The student leaves school at 2:30 PM.

The student's April 21, 2020 IEP remains in effect pending the implementation of a revised IEP. An annual IEP review meeting was held on April 14, 2021, and a draft IEP was presented for review and discussion, but the team did not come to agreement on a revised IEP.

Issues

In her complaint, the parent raises four issues:

Issue One: The district moved the student from one classroom at the state school to a different classroom at the school without first providing the parent with either prior notice of the change or a satisfactory explanation as to why the change was made.

Parent's Position

The parent asserts that, at the beginning of the 2020-21 school year, the student was transferred from the CBP classroom - which the parent considered to be an appropriate educational setting – to a "non-specialized [other than American Sign Language] 1st-2nd grade classroom" at the state school. The parent contends that no mention of a plan to move the student to the 1st-2nd grade classroom was made during the annual IEP review in January 2020 or during an IEP team meeting held on April 21, 2020.

The parent states that no one from the school provided her with any "cogent" or "responsive" explanation regarding why the student was removed from the "special education classroom." She reports that she has only been told that "the entire school is special education" and the student was never removed from special education.

It is the position of the parent that the needs of the student were better addressed in the CBP classroom. The parent asserts that the classroom size and structure better met the needs of the student. She further asserts that the CBP program better addressed the student's cognitive delays because the greater level of paraeducator support in the CBP classroom allowed more time for the teacher to provide individual instruction time for each student. According to the parent, the CBP classroom had two paraeducators in addition to the one-on-one paraeducators assigned to some of the students in the room.

The parent states that the only paraeducator in the 1st-2nd grade classroom was the paraeducator assigned to the student. The parent reports that the 1st-2nd grade classroom teacher stated during parent-teacher conferences in February 2021 that she was only able to spend 15 minutes a day with the student.

District's Position

The district asserts that the student's placement in a special day school program was not changed when the student was moved during the 2020-21 school year from the CPB classroom at the school to the 1st-2nd grade classroom.

While acknowledging that it would have been best to convene an IEP team meeting to discuss the rationale for a change in the student's classroom assignment, it is the position of the district that all of the classrooms at KSD provide services to students in a special day school placement. Any change in classroom assignment for the student represents a change in the location or setting for the delivery of services within the special day school, not a change of placement.

According to the district, the administrative decision to change the classroom assignment for the student was made because

- there were concerns about the student modeling inappropriate behaviors from other students in the CBP classroom;
- the student's language skills were somewhat higher than other students in the CBP classroom;
- the student's ability to hear and benefit from spoken English had improved; and
- the school was following Center for Disease Control (CDC) guidance regarding social distancing and contact tracing.

The district contends that the instruction delivered to the student in the 1st-2nd grade classroom was specially designed in accordance with her IEP to meet her unique and individual needs – just as it had been in the CBP classroom.

Applicable Statutes and Regulations

The IEP team – a group of people, including the parent and other persons knowledgeable about the child, the meaning of evaluation data, and placement options – makes the decision about the child's educational placement. 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 building (K.A.R. 91-40-1(t)).

School districts are to make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of children with disabilities. The continuum of alternative educational placements includes instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions (K.A.R. 91-40-21(b); 34 C.F.R. 300.115(b)(1)).

According to K.A.R. 91-40-4, when a student is placed at one of the Kansas state schools for the deaf and blind, the placement must be based on a child's IEP, which must indicate a need for educational services provided at the state school. To ensure that teams continue to consider whether placement of the child in the home school district (generally considered the least restrictive environment or LRE) would be more appropriate, LRE must be considered at each annual IEP meeting.

Parents must provide consent for any substantial change in placement (more than 25% of the child's school day) or material change in services (increase or decrease of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or a service) (K.S.A. 72-3430(b)(6)).

Investigative Findings

At the annual IEP review meeting for the student on April 21, 2020, the team discussed the least restrictive environment for the placement of the student. In addition to placement at KSD, the team considered the option of providing services to the student in her neighborhood school as well as the option of serving her in a center-based program located in another school in the district with a teacher of the Deaf and an interpreter. The team determined that KSD – a special school – continued to be the most appropriate placement for the student. The decision to continue the placement of the student at KSD was based on the student's need for "direct signed communication for her educational needs…[and] social interaction with peers who can communicate fluently in sign language…[as well as the presence of] adult deaf role models.".

The "Special Education and Related Services" portion of the "Anticipated Services to Be Provided" section of the student's April 2020 IEP states that the student is to receive "Special Education [Deaf Education]" for 256 minutes per day, five days a week in "KSD classrooms." The IEP does not specify that the student

must be served in the CBP classroom or any other specific classroom at the school.

Within KSD, the 1st-2nd grade classroom provides special education services to students, modifying curriculum and instruction to meet individual needs. Students are placed in the classroom based on age rather than academic achievement levels. Most students in this classroom have language delays and are instructed below their grade levels. Instruction in this classroom is offered in both sign and spoken English.

The CBP classroom typically provides special education services to students with more challenging behaviors. The students are usually pre-linguistic. This classroom utilizes visual materials, sign, and some spoken English. The language, both sign and English, used in the classroom is more limited than the 1st-2nd grade classroom due to the limited language levels of the students. Students served in the CBP classroom are more likely to have cognitive impairments and may never reach a linguistic level. Instruction is provided to students using both state extended standards and the general education curriculum. This classroom allows for more breaks and hygiene times in addition to additional instruction in self-regulation strategies for behavior. All students in the CBP classroom are supported one-on-one by paraeducators.

In the Spring of 2020, the student was beginning to model undesirable behaviors from other students in the CBP classroom. In addition, the student was performing at a somewhat higher level than the other students in the CBP classroom with regard to her language skills. She demonstrated hearing within the normal range, and the bilingual specialist reported that she was showing a preference for English expression (rather American Sign Language (ASL).

In the Fall of 2020, KSD was implementing Center for Disease Control (CDC) social distancing and contract tracing requirements. The student underwent surgery in September of 2020 and first attended school on October 1, 2020. At the time of the student's entrance, there were 6 students and 5 adults in the CBP classroom and 7 students and 1 adult in the 1st-2nd grade classroom. Adding the student and her assigned paraeducator to the CBP classroom would have increased the total number of people in that room to 13. Adding the student to the 1st-2nd grade classroom brought the total there to 10.

In the 1st -2nd grade classroom, the student's instruction was individualized to meet her unique needs. According to the district, the student received similar

instructional time from the highly qualified teacher in the 1st-2nd grade classroom as she would have received in the CBP classroom.
After the change to the 1st-2nd grade classroom, the student continued to receive all of the other services specified in her IEP including speech, physical therapy, occupational therapy, audiology services, and school health services.

Summary and Conclusions

On April 21, 2020, the student's IEP team conducted an annual review of the student's IEP. The student had been receiving services at KSD since the 2017-18 school year, and the team determined that she should continue to receive her special education "Deaf Education" services in KSD classrooms – all of which are special education classrooms. The student's April 2020 IEP did not specify that services to the student were to be delivered in any particular classroom at the school.

When the student started school on October 1, 2020, the school placed the student in the 1st-2nd grade classroom rather than in the CBP classroom where she had been placed since she was first enrolled in the school. The decision to make that change was based upon a number of factors including

- CDC guidelines;
- the student's performance level which was somewhat higher than peers in the CBP classroom;
- her demonstrated preference for English rather than ASL expression; and
- observations by staff that the student was modeling undesirable behaviors of peers in the CBP classroom.

The student continued to receive 256 minutes, five days a week of special education services as well as all other services specified in her April 2020 IEP. The student continued to receive one-on-one support from a paraeducator and individualized instruction from a highly qualified teacher.

While the district – and the investigator – recognize that communication with the parent regarding the change to the student's classroom assignment should have been more explicit, the change in classroom assignment for the 2020-21 school year was not a change in placement. The student continued to receive special education services in a special school – the state school for the Deaf. A

violation of special education statutes and regulations is not substantiated on this issue.

Issue Two: The denial of an appropriate education in the 2020-21 school year has caused regression and the deprivation of educational benefits for the student.

Parent's Position

The parent asserts that the student regressed academically, developmentally, and socially during the 2020-21 school year. The parent states that while the student had in the past enjoyed school, she had, by the spring of 2021 begun to resist going to school, threw papers in the trash rather than posting them on the family refrigerator, and displayed disinterest or defiance at school.

District's Position

The district contends that the student actually did make progress during the 2020-21 school year despite an excessive number of days absent or tardy. It is the position of the district that the parent has drawn inaccurate conclusions about the student's performance based upon flawed comparisons of student data.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324.

In Endrew F. v. Douglas County School District, the Supreme Court addressed the concept of "FAPE" noting that the educational program reflected in a student's IEP should be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

Investigative Findings

In support of her allegations, the parent pointed to the student' performance on the Kaufman Assessment Battery for Children II (KABC-II). The KABC-II is, according to the company website at https://www.pearsonassessments.com, an individually-administered, norm-referenced instrument designed to measure the cognitive processing of children and adolescents ages 3 through 18. The test is not designed to measure either progress or regression within the educational setting.

When assessed using the KABC-II in April 2018, the student earned a standard score of 53 on the Nonverbal Index of the instrument, indicating that the student was performing below the first percentile when compared to age peers. When the test was administered again in March 2021, the student's standard score on that same Nonverbal Index was 43, also below the first percentile. The parent and the district both state that these scores reflect a "confidence level" of 90%, meaning that at each assessment point there is a 90% probability that the student's true performance score on the test would fall between a pre-established range of values. For the April 2018 assessment, that range was 50-62; for the March 2021 assessment, that range was 41-51. Because these ranges overlap, the difference between these two scores is not considered to be statistically significant.

In support of her allegations regarding regression and deprivation of educational benefit, the parent asserts that the student's language development remained at the 2-year to 3-year level from 2019 until 2021. In her complaint, the parent states that from 2017 to 2020, the student had been described as using "3 sign sentences to communicate, [and] in 2019 and autumn 2020 she is starting to tell stories." However, in 2021, the parent states that the student is now described as using 1 or 2-word sign approximations at school in American Sign Language (ASL), the student's only expressive language.

The parent cites scores from two different language-related assessments as evidence of the student's regression and lack of educational benefit. However, the scores do not provide clear "apples to apples" comparisons as the instruments measure different constructs. One measure looks specifically at a student's understanding of basic concepts, while the other assesses a child's acquisition of sign language milestones.

In her complaint, the parent cites the student's performance on the Bracken Basic Concept Scale, which – according to the company website at https://www.pearsonassessments.com, evaluates a child's acquisition of basic concepts nonverbally, skills that are "strongly related to cognitive and language development as well as early childhood academic achievement." The parent notes that when the student was assessed using the scale in 2019, the student scored in the 3.1-5.1-year range in receptive language and at the 3.1-4.6-year range in expressive language.

The Bracken has a ceiling age of 6 years, 11 months. At the time the student was assessed, she was 7 years, 6 months of age – out of the age level for the test. According to the district, the test was administered for the purpose of gathering information on language development and mastery of various milestones. The assessment tool was used to determine what concepts had or had not been mastered in order to plan curriculum-relevant instruction. No evidence was provided to show that this test was administered again after May of 2019 to determine whether any gains in the mastery of basic concepts had been made.

The Visual Communication and Sign Language Checklist (VCSL) looks at key milestones in Sign Language development from birth to the age of 5. The district reports that the student was functioning in the 1 to 2-year instructional range in the spring of 2018. The majority of ASL communication skills in the birth to 1-year stage were mastered with the remaining skills mostly in the inconsistent levels. Two ASL goals were created to be carried out by the classroom teacher: 1) Use negative headshakes alone or with signs, and 2) Correctly communicate wants and needs. Within the IEP year, the student was able to correctly communicate wants and needs, but had not mastered the use of headshakes to communicate negation alone or in conjunction with signs. No evidence was found by the investigator that showed that the student was using "3 sign sentences to communicate."

The VCSL was administered again on April 2, 2019 and showed that the student was functioning in the 2 to 3-year instructional range. All skills in the birth to 1-year stage were reported as having been mastered. All but two of the skills in the 1 to 2-year range were mastered.

The VCSL was not administered prior to the development of the student's April 21, 2020 IEP due to school closure (COVID-19), but the bilingual specialist stated

he believed – based upon his conversations with the student's classroom teacher – that at the time of the meeting the student was at the 2 to 3-year range instructionally.

On March, 11, 2021, the VCSL was administered once again. The student had maintained the skills that she had previously displayed in the 2 to 3-year range. At the time a revised IEP was proposed on April 15, 2021, the bilingual specialist determined that the student was operating in the 2 to 4-year range instructionally. The student was responding to questions with head shakes and one to two-word signs or sign approximations.

According to the "Communication" portion of the "Present Levels of Academic and Functional Performance" section of the IEP proposed by the district on April 14, 2021, the student had made "great progress this year in being able to tell 3-4 things that happen in a story" using 1 to 2-word sign approximations, one of the goals established in the student's April 21, 2020 IEP. Results of two vocabulary measures place the student below the first percentile with regard to expressive vocabulary (Expressive One-Word Picture Vocabulary Test) and receptive signed vocabulary (Carolina Picture Vocabulary Test). These scores correlate closely with the student's past performance on the KABC- II.

According to the proposed April 15, 2021 IEP, the student was also given the Language Processing Test – 3 which measures language processing and semantic development. The student's scores on this instrument "were improved from her 2019" test" and "above what would be expected from her measured language levels."

The parent points out that the student had demonstrated one-to-one correspondence in counting objects up to 6 and 7 at the time of her April 21, 2020 IEP but was only showing consistent one-to-one correspondence up to 5 at the time an IEP was proposed on April 15, 2021.

The parent states that in 2019, the student was described as "chatting with adults, and interacting well with peers in a classroom setting. She responded to other children's questions, but avoided initiating conversations, games and interactions at recess." The parent reports that in 2020, the student was "helping younger students and students in the CBP classroom who need more support." In 2021, the parent reports that the student was "described as having little desire to be around her peers." According to the parent, the student was

resisting going to school in the morning. She no longer wanted to post her school work on the refrigerator at home and was reported by her teacher as not wanting to participate in class and exhibiting defiant delays in following directions.

By contrast, the school reports that the student has demonstrated that she can understand and learn classroom routines. According to the district, staff members have not witnessed any resistance on the part of the student to entering the school building. However, staff have observed defiance on the part of the student when she has been asked to participate in gross motor activities such as physical therapy or PE, and a goal was included in the proposed April 15, 2021 IEP to address that defiance.

IEP Progress Reports for the student show that the student did not achieve IEP goals associated with the student's April 21, 2020 IEP at the same rate as she had achieved goals for the previous IEP period. In fact, the student failed to achieve more than half of her goals. However, a number of factors may have impacted the student's learning over the period of March 2020 through August 2021.

For example, the student did not participate in remote learning opportunities offered by the school during the fourth quarter of the 2019-20 school year, a period of time during which the school was closed by order of the governor of the state due to the COVID pandemic. During that period, the student was, by report of the parent, not able to engage in school activities because of extreme fatigue resulting from her physical disabilities. The student never participated in "Facebook Morning Meetings" conducted daily at 10:00 AM. She did not attend any Zoom meetings with the physical therapist during the fourth quarter, and there was no response to weekly check-in emails. The student did not attend sessions with the speech therapist. No work was returned to the English/language arts teacher.

Though eligible, the student did not participate in the Extended School Year (ESY) program for the summer of 2020. The parent reports that the student continued to be unwell throughout the summer and, along with other family members, contracted COVID in late July. The student had been scheduled for a procedure at a local hospital but that was delayed into the Fall of 2020. In August, the family traveled to South Carolina to visit the parent's grandfather who was also recovering from COVID.

The 2020-21 school year for KSD began on September 9, 2020, but the parent's grandfather took a turn for the worse and the family remained in South Carolina. On September 29, 2020, the student underwent the surgery that had been previously delayed.

The student attended school for the first time during the 2020-21 school year on October 1, 2020 and attended on a 5-hour, shortened day basis. The student was absent for 14 additional days during the remainder of the 2020-21 school year and arrived at school late on 46 days. By comparison, the student was absent for 14 days between August 20, 2019 and March 13, 2020. She was tardy on more than 90 days during that same period.

Again, though eligible, the student did not participate in ESY for the Summer of 2021. The student has continued to attend school on a shortened day basis for the 2021-22 school year and again has frequently been absent or tardy.

Summary and Conclusions

The COVID pandemic caused this student, like students across the state and nation, to miss the last quarter of the 2019-20 school year. The student's physical condition kept her from participating in the remote learning opportunities put in place by the school during those weeks to mitigate learning loss. The student was unable to take part in any interactions with her class or any sessions offered by other special education providers to address her goals.

Due to health issues, the student could not participate in any extended school year (ESY) programs for the summer of 2020 even though she was eligible, and the student did not return to school until the end of the first week of October 2020.

After her return to school in October, the student was absent for an additional 14 days during the 2020-21 school year. When combining absences with the days missed because of her late start, the student missed 30 days of instruction during the year. Additionally, the student was tardy during the 2020-21 school year for an additional 46 days.

If the 56 days the student was unable to participate in remote learning opportunities in the third quarter of the 2019-20 school year are added to the 2020-21 absences, the student missed 86 days of instruction between March

12, 2020 and the end of the 2020-21 school year in addition to being unable to take advantage of ESY programming due to health issues.

By contrast, the student was absent for a total of 14 days for the 2019-20 school year prior to March 12, 2020. While IEP goals were achieved at a significantly higher level during the 2019-20 school year than during the 2020-21 school year, the student was also far more available for instruction during that earlier time period.

While this investigation did not find clear evidence that the student regressed during the 2020-21 school year, there is evidence to show that the student did not reach more than half of the goals set for her in her April 21, 2020 IEP. However, the investigator cannot draw a clear, causative relationship between the student's assignment to the 1st-2nd grade classroom and attainment of IEP goals. Student absences and late arrivals at school likely had a profound negative influence on the student's performance. Under these circumstances, a violation of special education statutes and regulations is not substantiated on this issue.

Issue Three: The student was denied services that were indicated on her 2020 IEP.

Parent's Position

It is the position of the parent that the student was denied the services of a bilingual specialist from October 2020 through April 2021 and as a result failed to achieve an IEP goal related to American Sign Language (ASL) skill acquisition. According to the parent, the student was attending school on a shortened day basis due to a physical condition that limited the student's energy level. The parent states that she was unaware that the student's delayed arrival at school was resulting in the student having missed the opportunity to work with special ASL instructors. It is the parent's contention that had she been made aware that ASL instruction was provided prior to the student's arrival at school, the student's window for school attendance could have been shifted so that the student could participate in the ASL instruction.

District's Position

It is the position of the district that the student has been provided with all of the services specified in her April 21, 2020 IEP and subsequent October 15, 2020

amendment. The district asserts that ASL immersion sessions with the bilingual specialist were not required by the student's IEP.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Investigative Findings

According to the district, ASL immersion sessions are provided by the bilingual specialist as a short-term intervention. These sessions are intended to boost a student's skills in order for the student to function more successfully in the classroom. The student's April 21, 2020 IEP contains no reference to the provision of ASL immersion sessions for this student.

No immersion sessions were offered to any student at the school during the Fall semester of the 2020-21 school year due to social distancing rules and contact tracing related to the COVID pandemic. When immersion sessions resumed in January of 2021, the student had not yet been recommended for participation in immersion. The student was first recommended for ASL immersion sessions after an IEP team meeting on April 15, 2021. She began participating in those twice weekly, 45-minute sessions at that time and continues her participation to date.

The student's April 21, 2020 IEP includes (under the "Communication" portion of the "Present Levels of Academic and Functional Performance) an "American Sign Language Report" completed by the bilingual specialist at the school. Under "Recommendations," the specialist stated

> [The student] benefits from intensive modeling of language, culture, and social behavior which is conducive to her receptive and expressive communication needs to maximize her social, academic, and language

> learning. She is able to get that with her peers and teachers every day in her classroom. She will have one ASL Communication goal to be handled by her classroom teacher and paraprofessionals: Increase her expressive ASL vocabulary to at least 150 signs.

A goal related to ASL was monitored in October and December 2020 and in March and April of 2021. According to a Progress Report provided by the district, the student's ASL goal was

> By May 2021, with visual prompts such a listing, [the student] will correctly (80% or greater accuracy) repeat in ASL instructions/directions given to her before performing an assignment or task in 4/5 trials.

The goal was not addressed via distance learning after the state governor mandated school closings for the fourth quarter of the 2019-20 school year due to the COVID pandemic. As noted above under Issue Two, the student was not available for any instruction until her return to school in the first week of October 2020. The student met the first benchmark (responding appropriately on one of five trials) by October 30, 2020. She met the second benchmark on December 23, 2020 by responding appropriately on two of five trials. However, the student did not attain benchmarks requiring appropriate responses on three and four of five trials when monitored in March and April 2021. As of April 14, 2021, she continued to respond appropriately on only two of five trials. At that time, the bilingual specialist wrote

> [The student], if left alone, typically does not focus on instruction when delivered in ASL. She also does not stay on task with seat work. [Her] most preferred form of expression is through spoken English, but it is often unintelligible. She will respond again in ASL when prompted, but often copies signs until she lands on the correct sign. [The student] typically uses 1 to 2 signs per utterance. When working or receiving instruction in a large-group setting, [she] often loses focus, and unless redirected, will remain that way. [The student] benefits more from 1 on 1 instruction, and if she prefers the mode of spoken English, then that is her best mode for learning at this time. However, the bulk of instruction in her classroom is delivered in ASL. English is used mostly in the form of print to be read on screens and on paper. Spoken English is used by the majority of her peers in her classroom, but [she] does not engage with her peers. [The student] has missed a lot of instruction time this year

due to arriving late and leaving early daily. This goal has not been met. An alternate goal has been proposed and will be handled in 1 on 1 ASL tutoring."

The district proposed a new ASL- related IEP goal at the student's annual IEP team meeting on April 15, 2021. However, that IEP has not to date been finalized.

Summary and Conclusions

The student's April 21, 2020 IEP did not require that the student be provided with ASL services from a bilingual specialist. The ASL-related goal contained in the April 2020 IEP was to be "handled by her classroom teacher and paraprofessionals." No ASL immersion classes were offered to *any* student during the first semester of the 2020-21 school year because of COVID-related protocols. ASL immersion classes were reinstated for the second semester, but this student was not recommended for inclusion in that program until after April 14, 2021. The parent's allegation that the student was denied services that were specified in her April 21, 2020 IEP is not substantiated.

Issue Four: The student's parents were denied access to appropriate information.

Parent's Position

The parent asserts that "deception" was used to exclude the student's parents from the decision-making process regarding the student's assignment to the 1st-2nd grade classroom for the 2020-21 school year. It is the position of the parent that, in September and October of 2020, she was kept from speaking with staff (the nurse and an administrative assistant) about her concerns, was given incorrect information about the class assignment, and was not afforded an opportunity to participate meaningfully in parent/teacher conferences or in decisions regarding the change in the student's classroom. The parent states that had she been asked about a potential reassignment of the student to the 1st- 2nd grade classroom for the 2020-21 school year, she would have asked questions about possible benefits of such a move and would have asked how progress or regression after the move would be assessed.

It is the position of the parent that the school nurse was prohibited from speaking to the parent about the management of the student's midday water

bolus. Specifically, the parent asserts that the nurse could not talk with her about who would be managing the bolus and where.

The parent also contends that she should be consulted at the beginning of each school year about the student's program – particularly when there is a change in teaching staff. She reports that, during the student's April 21, 2020 IEP meeting, the decision was made to focus on capitalized letters during the 2020-21 school year, but the parent asserts that the worksheets that she saw during the 2020-21 school year did not focus on that skill. It is the position of the parent that had she met with the student's teacher at the beginning of the school year, she could have confirmed that work would focus on established IEP goals.

District's Position

The district asserts that the parent was invited to and fully participated in IEP team meetings regarding the student including the annual IEP review on April 21, 2020 and an IEP amendment meeting on October 15, 2020 and was provided with notice of both of these meetings. The district also states that the parent participated in an informal Zoom meeting held at the request of the parent on October 2, 2020 with the teacher, long-term sub, paraeducator, nurse, and Principal. Further, the parent was in frequent communication with KSD staff throughout the period specified by the parent in her complaint as demonstrated by multiple emails to and from KSD and the parent.

Applicable Statutes and Regulations

In order 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. School teams recognize the contributions that parents can make to the process and how they can help ensure their child's educational progress (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b) and (c)).

According to K.A.R. 91-40-17, each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP meeting or

are afforded the opportunity to participate. This includes scheduling each meeting at a mutually agreed-upon time and providing written notice at least 10 days in advance of the meeting.

Special education statutes and regulations do not address processes, forms, and procedures that districts use with regard to the day-to-day communication with parents.

Investigative Findings

Communication with staff:

On Thursday, September 23, 2020, the parent sent an email to the head teacher stating that she would "like to visit with someone about [the student's] school year. A phone call would be fine." On Friday, September 24, 2020, the parent sent another email to the head teacher, nurse, administrative assistant, and others asking for a meeting "to discuss the school plan" for the student.

The head teacher responded to the parent on Monday, September 28, 2020 noting that she had been out of town from the previous Wednesday through Sunday, September 27, 2020 and was "catching up on emails." The head teacher wrote that the student's "school plan will be the same as it has been in the past….I am available to chat on the phone during the times below: Tuesday: 9 AM to 9:45 AM; Tuesday: 1 PM to 2 PM; Tuesday: 3:30 PM. If none of those work, I'll look into Wednesday."

The parent sent an email to the head teacher on September 28, 2020 asking "who will be the staff in the classroom with [the student] on a regular basis?" The head teacher wrote back on that same date, providing the name of the teacher and her substitute until the teacher's maternity leave ended on October 5, 2020. The head teacher also provided the name of the temporary long-term substitute paraeducator who would be working with the student until a permanent paraeducator was hired.

In email exchanges between the parent and head teacher on September 28, 2020, the parent asked for a meeting with the student's classroom teacher and the substitute. A Zoom meeting was proposed for October 5, 2020, the day of the classroom teacher's return from her leave. The parent asked that the long-term paraeducator participate, and – in additional email exchanges on September 28, 2020 – the nurse asked to join in as well. After further email

exchanges regarding scheduling, a meeting was set for October 2, 2020. The meeting was scheduled to last 20 minutes, but the school team agreed that if more time was needed, the parent could meet separately with the teacher.

In a written statement dated October 14, 2021, the nurse for the school affirms that "at no time was I ever told or asked not to communicate with [the parent], and freely communicated with her as needed."

In a written statement dated October 14, 2021, the administrative assistant identified by the parent in her complaint, writes in part

> I have known (the parent) for approximately 5 years. In the past, (the parent) asked me some questions about her daughter, her daughter's teacher, class assignment and the plans. I told her that she would need to ask her child's teacher and/or…the principal since they are the appropriate people to talk to about it and may know more information about it than I do. I was never instructed by (the principal) or by any KSD staff not to speak to (the parent).

The district reports that the nurse has no recollection of any request from the parent for information about where the student's midday water bolus would be managed.

Parent/Teacher conferences:
With regard to the October 12, 2020 parent/teacher conferences, the district acknowledges that there was an unintentional delay in the communication with the parent. The teacher inadvertently sent an email about conferences to an incorrect email address (jsknewton@… rather than js[]@…). When the parent had not signed up for a conference time as expected, the teacher sent a follow-up email offering three available conference times, but the message was once again directed to the incorrect address.

The head teacher discovered the error on October 15, 2020, and on October 16, 2020 sent an email to the parent explaining the situation. The parent responded via email, thanking the head teacher for "checking into the communication gap."

Participation in IEP team meetings:

After the October 2, 2020 meeting with staff, an IEP team meeting was scheduled for October 15, 2020. The parent was provided with written notice of the meeting and participated in the meeting, subsequently providing written consent for a change to the student's school day moving her starting time from 9:00 AM to 9:30 AM and her departure time from 2:00 PM to 2:30 PM beginning on October 19, 2020.

The determination to place the student in the1st-2nd grade classroom for the 2020-21 school year was an administrative decision based on factors described above under Issue One – not an IEP team placement decision.

Focus on established IEP goals:
The student's April 21, 2020 IEP contains the following goal:

> "By April 2021, when given a written model, [the student] will be able to write 15 uppercase letters with 80% accuracy in 4/5 trials."

The goal and related benchmarks were addressed by both the teacher and the occupational therapist (OT). The student received 20 minutes of direct OT service twice weekly. During therapy sessions, the OT focused on foundational skills the student needed in order to achieve her handwriting goal including such skills as hand strength to improve grip, visual perceptual skills and visual motor connection. The OT and classroom teacher collaborated to develop a capital letters practice workbook for the student to use in the classroom.

The student met established benchmarks for the goal in October and December of 2020, and March, 2021. By March 2021, the student was able when prompted to identify and write 20 uppercase letters independently when provided with a model with 80% accuracy in 4/5 trials (A, B, C, D, E, F, H, I, J, K, L, O, P, R, S, T, U, V, X, and Z).

Summary and Conclusions

The investigator found no evidence of any intent on the part of staff at the school to deceive the parent, to limit communication with staff, or to exclude the parent from any decision-making process. As a result of simple human error, communication with the parent regarding parent/teacher conferences was misdirected. The parent sent an email asking to speak about the plan for the student for the year, and the head teacher offered times for a phone

conference within three school days of receiving the parent's request. The parent was provided with prior notice of IEP team meetings held between April 1 and October 15, 2020 and attended those meetings. There is no evidence to show that any staff member was prohibited from speaking with the parent. Additionally, there is no evidence to support the parent's contention that the student's mastery of her OT goal was negatively impacted by the absence of a meeting between the parent and the teacher at the beginning of the school year. A violation of special education statutes and regulations is not substantiated on the allegations specified under this issue.

Corrective Action

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

Right to Appeal

Either party may appeal the findings in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). Due to COVID-19 restrictions, the written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of

education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON AUGUST 16, 2021

DATE OF REPORT SEPTEMBER 17, 2021

This report is in response to a complaint filed with our office by _____, mother, on behalf of her 21-year old son, _____. It is noted that the parent has been appointed as her son's legal guardian by the court. In the remainder of this report, _____ will be referred to as "the student" and _____ will be referred to as "the mother" or the "the parent."

The complaint is against USD #___ (_____ Public Schools). In the remainder of the report, USD #___ may be referred to as the "school," the "district" or the "local education agency (LEA)."

The Kansas State Department of Education (KSDE) received the complaint on August 16, 2021. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on September 15, 2021. KSDE granted an extension of two days to complete the investigation at the Complaint Investigator's request.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on August 17 and August 30, 2021 as part of the investigation.

USD #___ made the following school staff available for a telephone interview on September 1, 2021:

- [AG], Mediation / Due Process Supervisor
- [DL], General Counsel

In addition, Angie Estell, Director of Special Education at USD #261 (Haysville Public Schools) was interviewed on September 2, 2021.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) dated February 19, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent (PWN) dated August 20, 2021
- Current Enrollment Verification showing enrollment at Northwest High School effective August 12, 2021
- USD #___ Board of Education (BOE) Policy P5506: Non-Resident Enrollment and Admission
- Email dated May 6, 2021 from [PG], Clerk to the Board of Education, to all district and building administrators in USD #___
- Letter dated July 13, 2021 from [LR], Director of Transportation, to the parent
- Email dated July 14, 2021 from the parent to [AC], Superintendent, and [GA], Deputy Superintendent
- Email dated July 20, 2021 from the parent to [VE], Assistant Superintendent of Student Learning Services
- Email dated July 21, 2021 at 11:56 a.m. from Dr. [VE] to the parent
- Email dated July 21, 2021 at 12:11 p.m. from the parent to Dr. [EV]
- Email dated July 21, 2021 at 3:05 p.m. from [JJ], Assistant to the Mayor, to the parent
- Email dated July 22, 2021 at 8:59 a.m. from Dr. [EV] to the parent
- Email dated July 22, 2021 at 9:12 a.m. from the parent to Dr. [EV]
- Email dated July 22, 2021 at 9:37 a.m. from the parent to [SL], At-Large Board of Education Member
- Email dated July 22, 2021 at 12:51 p.m. from Ms. [SL] to the parent
- Email dated July 23, 2021 at 10:48 a.m. from the parent to Ms. [SL] and Dr. [EV]
- Email dated July 23, 2021 at 4:40 p.m. from Dr. [EV] to the parent
- Email dated July 26, 2021at 7:53 a.m. from the parent to Dr. [EV]
- Email dated July 26, 2021 at 12:12 p.m. from Ms. [LR] to building principals in USD #___

- Email dated July 29, 2021 at 11:03 a.m. from the parent to Alexa Oliphant, Targeted Case Manager at Individual Advocacy
- Email dated July 29, 2021 at 12: 25 p.m. from Ms. Oliphant to the parent
- Email dated July 29, 2021 at 12:29 p.m. from the parent to Dr. [EV]
- Email dated July 30, 2021 at 1:33 p.m. from the parent to [LP], Registrar at Northwest High School
- Email dated July 31, 2021 at 3:38 p.m. from Ms. [LR] to [SS], Assistant Principal at Northwest High School
- Email dated August 2, 2021 from the parent to Dee Nighswonger, Director of the Developmental Disability Organization for Sedgwick County
- Email dated August 9, 2021 at 10:31a.m. from the parent to Tricia McConnell, Disability Rights Center of Kansas
- Email dated August 20, 2021 from Ms. [AG] to the parent
- USD #___ School Calendar for the 2020-21 school year
- USD #___ School Calendar for the 2021-22 school year
- Family Education Rights and Privacy Act (FERPA) annual notice to parents
- USD #___ Response to the Allegations dated August 25, 2021
- Email dated September 2, 2021 from Ms. [AG] to the Complaint Investigator
- Email dated September 16, 2021 at 9:17 a.m. from Ms. [AG] to the Complaint Investigator
- The KSDE Enrollment Handbook for the 2021-22 School Year

Background Information

This investigation involves a 21-year-old male student who is enrolled at _____ Northwest High School in USD #___ for the 2021-22 school year where he receives transition services as required by his IEP. The student has multiple disabilities including Autism and Fragile X Syndrome. The student resided in the USD #___ district boundaries until January 2018 when the family moved to a home within the USD #261 district boundaries. The student has received special education and related services throughout his school career exclusively at USD #___ as a resident student and then as a non-resident student through an enrollment application for special assignment. The student met graduation requirements in May 2018 as a senior in high school and has continued to attend _____ Northwest High School to receive specialized instruction for transition as a student aged 18 – 21 for the past three school years. The most recent

reevaluation of the student was conducted in January 2021 and the multidisciplinary team determined that the student continued to be eligible for special education and related services through the age of 21 under the exceptionality categories of autism and speech/language impairments. The 2021-22 school year is the last year the student will be eligible to receive special education and related services as he has reached the maximum age for services when he turned age 21 in August 2021.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the mother raised two issues that were 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 Individual Education Program (IEP) as written, specifically by not providing transportation as a related service during the 2021-22 school year.

Positions of the Parties

The parent alleges that USD #___ has failed to provide the student with transportation as a related service since the beginning of the 2021-22 school year as required by the February 19, 2021 IEP. The parent indicated that the student has attended Northwest High School in USD #___ since he was a freshman in high school during the 2014-15 school year. The parent stated that USD #___ provided the student with transportation to Northwest High School throughout his entire high school career until the current school year. The parent reported this change occurred because of a new district transportation policy which should not apply to her son because his IEP requires transportation as a related service.

The parent reported she first learned of the district's new transportation policy in a letter dated July 13, 2021 from the Director of Transportation. The letter stated that the district would no longer be providing transportation from the student's home to Northwest High School during the 2021-22 school year. The letter also informed her that she would be responsible for transportation if she wanted the student to continue to attend Northwest High School.

The parent stated that she immediately contacted multiple school officials and requested an exception be made to the policy since the student's IEP requires transportation as a related service. However, the district continues to refuse to provide transportation. The parent reported that she has been paying CarePool, a ride sharing program for persons with disabilities, to provide transportation for the student to attend Northwest High School since August 12, 2021, the first day of the 2021-22 school year.

The parent expressed great frustration that the Board of Education (BOE) Policy P5506 was adopted by the School Board at the beginning of May 2021 and that it took more than 10 weeks for her to be notified of the new policy in a letter dated July 13, 2021. This notification was less than a month prior to the first day of the 2021-22 school year. The parent noted that the student's teachers at Northwest High School had no idea that the student's transportation was being terminated until she contacted them for assistance following receipt of the letter.

The parent acknowledged that her current residence is not within the USD #___ district boundaries but believes USD #___ should be providing transportation for the student to and from Northwest High School despite the new BOE policy because the student's IEP requires transportation as a related service. She also believes an exception to the policy should be made because Northwest High School in USD #___ is the only high school the student has ever attended. The mother believes the student would regress if he changed schools during his final school year because of the emotional stress from not knowing anyone at the new school. In addition, the parent reported that their residence is only a couple of blocks outside of the school district boundaries and USD #___ provided transportation from this same residence during the 2020-21 school year.

USD #___ reported that the change in transportation status for the student is the result of an update to the BOE policy related to non-resident enrollment and admission which went into effect for the 2021-22 school year. This policy requires the lawful custodian of non-resident students who attend USD #___ through the Open Enrollment program to provide transportation to and from the school of attendance.

USD #___ reported that the student lives within the boundaries of USD #261 and has attended Northwest High School through the BOE's Non-Resident Enrollment and Admission policy. USD #___ also acknowledged that the student's IEP dated February 19, 2021 includes transportation as a related service and that the district provided transportation to and from the student's current residence in the previous school years; however, this was allowed under the previous BOE policy related to transportation for non-resident students. The district noted that parent was provided with PWN of the change in transportation services on August 20, 2021.

USD #___ indicated transportation for the student was stopped for the 2021-22 school year in compliance with their current BOE policy related to non-resident enrollment and admission.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #___.

The student's current IEP was developed at an IEP team meeting held on February 19, 2021. This IEP requires transportation as a related service be provided to the student and USD #___ did provide transportation between the student's current residence in USD #261 district boundaries and Northwest High School during the 2020-21 school year. USD #___ has not provided this same transportation service for the student during the 2021-22 school year.

The parent completed the online enrollment forms to attend Northwest High School in USD #___ on June 21, 2021 and the student's enrollment was confirmed by USD #___ on July 6, 2021. The parent was notified about the change in transportation on July 13,

2021 and subsequently contacted multiple school officials requesting an exemption to new transportation policy for non-resident students. The parent ultimately chose to continue the student's enrollment in Northwest High School in USD #___ through the BOE's Non-Resident Enrollment and Admission policy for the 2021-22 school year. The student has been in attendance since August 12, 2021, the first day of the 2021-22 school year.

The USD #___ amended BOE Policy P5506 Non-Resident Enrollment and Admission at its May 3, 2021 meeting to include the following statement, "Effective August 1, 2021, the non-resident student's lawful custodian is responsible for transportation of the student to and from school." The USD #___ BOE Policy P5506 indicates that special education students and regular education students will be treated equally under this policy.

On May 6, 2021, the Director of Transportation sent an email to all USD #___ district and building level administrators alerting them to this new BOE policy which would take effect on August 1, 2021 for the 2021-22 school year. The policy was also published on the district's website on or about that same date.

On July 13, 2021, the Director of Transportation sent a letter to the parent detailing the discontinuation of transportation to and from the student's out-of-district residence effective on August 1, 2021 in accordance with BOE Policy P5506.

On July 14, 2021, the parent sent an email to Dr. [AC], Superintendent, and Mr. [GA], Deputy Superintendent, requesting an exception be made to the new BOE policy; however, she received no response.

On July 20, 2021, the parent emailed Dr. Vince[EV], Assistant Superintendent of Student Learning Services, and again requested an exception be made to the new BOE policy and that the student continue to be transported between his residence and Northwest High School. Dr. [EV] responded and explained that no exceptions would be made due to BOE Policy P5506. The parent and Dr. [EV] exchanged additional emails on July 21 and July 22, 2021. In each of these contacts, the parent requested that the student continue to receive transportation to and from their out-of-district

residence and Northwest High School during the 2021-22 school year. However, each time her request was denied by Dr. [EV] citing BOE Policy P5506.

On July 22, 2021, the parent emailed [SL], At-Large BOE Member, and again requested that an exception be made to the new BOE policy for her son so that USD #___ could continue to provide transportation to Northwest High School during the 2021-22 school year. Ms. [SL] responded that same day and stated that no exceptions would be made and shared that the new non-resident transportation policy was even affecting several of her family members.

Following receipt of the July 13, 2021 letter, the parent reached out to the student's targeted case manager at Individual Advocacy, the director of the Developmental Disability Organization for Sedgwick County, the Wichita City Office, and the Disability Rights Center of Kansas for assistance. She explored several options for obtaining transportation for the student between their residence and Northwest High School including Wichita Transit's Paratransit Division and CarePool. The parent chose to pay CarePool to provide the student's transportation beginning on August 12, 2021, the first day of the 2021-22 school year.

School staff returned to work for the 2021-22 school year on August 4, 2021 to prepare for the first day of school at Northwest High School on August 12, 2021.

On August 16, 2021, USD #___ was notified of the filing of the allegations included in this child complaint and conducted an internal investigation. It was determined that the parent had not been provided with appropriate prior written notice of the change in transportation as a related service.

USD # ___ provided the parent with PWN on August 20, 2021. The description of the action proposed or refused states:

> The student will not receive the special education related service of transportation per BOE Policy 5506 NON-RESIDENT ENROLLMENT AND ADMISSION. However, the student may continue to attend USD ___ Northwest High School where he will continue to receive all other services

> as written in his IEP dated February 19, 2021 should you choose to provide transportation to and from Northwest High School.

The explanation of why the action is proposed or refused and the options considered and why rejected sections of the PWN both cite the fact the that the student is a non-resident of USD #___ and refer to BOE Policy P5506 Non-Resident Enrollment and Admission which it states that the lawful custodian of a non-resident student is responsible for the transportation of the student to and from school.

The other factors relevant to the proposal or refusal section of the PWN states:

> At this time, the student's IEP continues to recognize him as eligible for the special education related service of transportation should you choose for him to attend school in his district of residence - it has not been terminated from his IEP. The student is currently attending Northwest High School and is receiving his IEP as written (except for special education transportation).
>
> A Prior Written Notice informing you that special education transportation would no longer be provided outside of the _____ Public Schools attendance boundary area should have been provided to you prior to August 1, 2021. This Prior Written Notice serves as a correction to that oversight. Please note that written parental consent is not required.

It is noted that the August 20, 2021 PWN does not include the date the IEP team met to determine, with the parent's input, the proposed changes in special education and related services described in the PWN that need to be provided to the student.

USD #___ noted that the policy change has impacted both students without disabilities and students with disabilities who receive special education services. Ms. [AG] stated:

> In prior years, transportation was offered to non-resident students on a space-available basis for general education and special education students who did not otherwise have transportation designated as a related service on their IEPs. Subsequent to the updated P5506, space-available transportation is no longer offered. All non-resident students seeking to

enroll in the _____ Public Schools are informed of this prior to and upon enrollment under non-resident status.

Ms. [AG] noted that, in addition to the complainant's son, the district ceased out-of-district transportation for four other students with IEPs. All received the same letter from the Director of Transportation describing the change in transportation as a result of the new BOE policy. Of those four, only one had the special education related service of transportation on the IEP. A Prior Written Notice was also not provided to the parent of that student subsequent to the updated BOE policy P5506. Ms. [AG] reported that parent was provided with PWN about the change in transportation due to the new BOE policy on September 2, 2021. The remaining three students received general education transportation on a space-available basis prior to the new board policy and transportation is not identified on their current IEPs (all dated prior to May 2021) as a special education related service.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

Kansas statue K.S.A. 72-3410 states that each board shall provide a free appropriate public education (FAPE) for exceptional children who enroll in the district.

The Kansas Constitution allows each school district's locally elected board to create the policies on governing non-resident enrollment and admission so long as those policies comply with state and federal requirements. State and federal requirements mandate that any admission policies created by school boards must be neutral in regards to ALL nonresident children who elect to apply for admission in a nonresident district.

In this case, the student is a resident of USD #261 (Haysville School District) and the parent has chosen to have the student attend Northwest High School in USD #___ for the 2021-22 school year.

This attendance choice is subject to the provisions of the USD #___ BOE Policy P5506 Non-Resident Enrollment and Admission which states, "Special education students and regular education students will be treated equally under this policy." On May 3, 2021, the BOE Policy P5506 was amended to state, "Effective August 1, 2021, the non-resident student's lawful custodian is responsible for transportation of the student to and from school." The USD #___ Board of Education has the authority to make such an amendment under Kansas statute K.S.A. 72-6494.

The student's current IEP dated February 19, 2021, requires transportation as a related service. Interviews and documentation show that USD #___ provided transportation as a related service during the 2020-21 school year as allowed under the BOE Policy P5506 in effect at that time. However, transportation as a related service is not being provided to the student by USD #___ during the 2021-22 school year based upon the May 3, 2021 amendment to BOE Policy P5506. The parent alleges this is a violation of 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-19(a).

The 8th Circuit Court of Appeals ruled on this issue in July 2020. At this time, it is the only U.S. Circuit Court of Appeals that has ruled on this issue, and as such, is the most persuasive authority.

In *Osseo Area Schools, Independent School v. MNB* , 970 F.3d 917 (8th Cir. 2020), the school district was not required to provide the transportation as a related service a student who was enrolled through the district's non-resident open enrollment and admissions program even though the student's current IEP included it as a required service. The court noted that the Spending Clause of the U.S. Constitution requires Congress to specify all conditions imposed on grants of federal funds and that the IDEA does not require home-to-school transportation to a non-resident student as a condition of receiving federal funds. U.S. Circuit Judge Steven M. Colloton wrote:

> We see nothing in the IDEA that provides clear notice to a State that it must cover transportation expenses when a student's travel is the result of a parent's choice under an open enrollment program.

It is important to note that this ruling was limited the specific issue of transportation as a related service and does not extend to any other service that may be in the IEP of a non-resident student with a disability.

In this case, USD #___ allows non-resident students to apply for enrollment in the district and sets neutral conditions for that enrollment. Any enrollment in USD #___ by a non-resident student is subject to those conditions. One of the conditions set by USD #___ and authorized by Kansas statute is to deny transportation to nonresident students effective August 1, 2021. This means that a non-resident student who chooses to enroll in USD #___ does not have a right to receive transportation, even if transportation is in the IEP.

Interviews and documentation show the parent originally enrolled the student in USD #___ on June 21, 2021 and the application for special attendance enrollment was accepted on July 6, 2021. USD #___ made the parent aware of the new BOE policy on July 13, 2021. The parent subsequently obtained transportation through CarePool and the student has been attending Northwest High School in USD #___ since the first day of the 2021-22 school year.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide transportation as a related service during the 2021-22 school year because the parent made the choice to enroll the student as a non-resident student in USD #___ for the 2021-22 school year pursuant to the BOE policy P5506 and with full knowledge of the conditions set forth for such enrollment.

It is noted that USD #___ was not required to provide the parent with PWN of the change in transportation status pursuant to BOE policy P5506. The IEP was not changed by the team nor was it changed by an amendment. Transportation continues to be in the IEP and continues to be an enforceable IEP provision should the student enroll in the school district where he is currently a resident or should he become a resident student in USD #___ again.

Transportation became unavailable because the parent chose to select the non-resident option for the student to attend school in USD #___. That option was only available to the parent on the condition that the parent provide transportation. That

condition is a neutral provision to which any non-resident parent, both non-resident parents of students with a disability and non-resident parents of students without a disability, must agree in order to take advantage of the non-resident enrollment opportunity offered by USD #___.

The district does not have an obligation to provide a PWN when a parent elects to choose an educational option, subject to stated conditions, precisely because the parent has notice of the conditions and has agreed to those conditions when making the election.

ISSUE TWO: The USD #___, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), disclosed the student's personally identifiable information to an unauthorized person without the parent's consent during the past twelve months.

Positions of the Parties

The parent reported that Dr.[EV], a school official in USD #___, contacted the Director of Special Education in USD #261and shared the student's personally identifiable information, specifically the student's IEP status, without her consent. The parent alleges this happened sometime between her first contact with Dr. [EV] about the problem with the transportation policy on July 20, 2021 and when she spoke to the Special Education Director in USD #261on July 28, 2021. The parent stated that she was surprised to learn that the USD #261 staff already knew about her son's IEP even though he had never attended school in that district and she had never contacted anyone in USD #261 regarding enrollment for the student. The parent believes Dr. [EV] had no reason to contact USD #261 and share information about her son's IEP without her written consent.

USD #___ acknowledged that Dr. [EV] contacted the Director of Special Education at USD #261, Angie Estell, in regards to the student during July 2021. USD #___ believes that Dr. Evan's contact falls within the exception to the IDEA and the Family Educational Rights and Privacy Act (FERPA) which allows a district to release personally identifiable information about a student without written parent consent to another school system in which the student seeks or intends to enroll.

Findings of the Investigation

The findings of Issue One are incorporated herein by reference.

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in both USD #___ and USD #261.

USD #___ reported that Dr. [EV] was unable to recall or provide documentation of the exact date he contacted Ms. Estell in USD #261. He believes the contact was made sometime between July 14 and July 20, 2021.

USD #___ reported that Dr. [EV] contacted the student's district of residence seeking to determine if that district had knowledge of the parent and to inform USD #261 that USD #___ had informed the parent of the district's acceptance of the parent's enrollment application for special assignment should she seek to enroll the student in USD #261 for the 2021-22 school year.

Ms. Estell was unable to recall or provide documentation of the exact date that Dr. [EV] contacted her in regards to the student. She believes the contact was made sometime after July 6, 2021 when she returned from vacation and prior to July 28, 2021 when she spoke to the parent by telephone. Her recollection of the conversations was that Dr. [EV] was calling to give her "a heads up" about a student with an IEP who resided within the boundaries of USD #261 and who might be enrolling for the 2021-22 school year.

The parent and Ms. Estell both reported that their telephone conversation occurred on July 28, 2021. During this conversation, the parent shared information about the student's IEP and the transition services he received at Northwest High School in USD #___. Ms. Estell provided information about the range of transition services provided for students ages 18-21 at the high schools in USD #261. Both parties agree that the parent would "reach out" if she wanted to enroll the student in USD #261.

The parent has no direct knowledge of when Dr. [EV] contacted Ms. Estell in USD #261 but is certain that it occurred prior to the July 28, 2021 phone call. The parent reported that it was during this phone call with Ms. Estell that she learned that Dr. [EV] had previously contacted Ms. Estell about the student's IEP and the fact that the student was residing within the USD #261 boundaries. She shared her frustration

about this contact in an email dated July 30, 2021 with the Registrar at Northwest High School by stating:

> And [EV] even went as far as to tell me to put him in Haysville schools and he even contacted them and told them about the student.

The parent states that she never sought, requested, nor had any intention of enrolling the student in USD #261. She believes she made this clear in her emails to Dr. [EV] as noted below:

- July 20, 2021 at 1:14 p.m.: "I WILL NOT SEND MY SON TO HAYSVILLE SCHOOLS!"
- July 21, 2021 at 12:11 a.m.: "I do not want to change the school district, and I think an exception should be made. Otherwise I will be forced to pull him out.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.622(a)(1) require school districts to obtain parent consent prior to releasing personally identifiable information about a student to an unauthorized person unless the information is contained in education records and the disclosure is authorized without parental consent under a FERPA exception.

Federal regulations implementing FERPA at 34 C.F.R. 99.3 state that the term "personally identifiable information" (PII) includes, but is not limited to the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the school district reasonably believes knows the identity of the student to whom the education record relates. A student's disability status and any information about a student's IEP services would fall under the definition of PII.

"Directory information" is defined at 34 C.F.R. 99.3 as information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. This includes a student's name and address. Under 34 C.F.R. 99.31(a)(11) and 99.37(a), a school district may disclose PII from an education record of a student without parent consent if the disclosure is information the school district has designated as "directory information" and the school district has given public notice to parents of (1) the types of PII that the school district has designated as directory information, (2) a parent's right to refuse to let the school district designate information about the student as directory information, and (3) the period of time that a parent has to notify the school district in writing that they do not want information about the student designated as directory information.

In this case, interviews and documentation show that Dr. [EV] shared information about the student with a school official in USD #261 without parent consent. It is clear that he released directory information about the student's address and the fact that the student is currently residing within the boundaries of USD #261. It is not clear that he shared specific information about the student's disability or the student's IEP; however, the fact that Dr. [EV] contacted the Director of Special Education in USD #261, rather than a general education district administrator, indicates that disability status was likely part of the conversation.

Federal regulations implementing FERPA at 34 C.F.R. 99.31(a)(2) allows school districts to disclose personally identifiable information without parent consent to officials of another school where the student seeks or intends to enroll so long as the disclosure is for the purposes related to the student's enrollment or transfer.

In this case, the parent made it clear in the July 20, 2021 email to Dr. [EV] that she had no intention to enroll the student in USD #261. However, it is unclear when Dr. [EV] shared the personally identifiable information with the school official in USD #261. Based upon the parent's initial contact with USD #___ school officials in the email dated July 14, 2021, it is possible that Dr. [EV] had reason to suspect the parent would seek to enroll the student in USD #261 based upon the change in transportation for non-resident students for the 2021-22 school year. Dr. [EV] reported he contacted Ms.

Estell sometime between July 14 and July 20, 2021and Ms. Estell indicated the contact could have been made any time between July 6 and July 28, 2021.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for the disclosure of the student's personally identifiable information to an unauthorized person without the parent's consent during the past 12 months.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON JULY 6, 2021

DATE OF REPORT: AUGUST 4, 2021

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on July 13, 2021. On July 15 and 28, 2021, the investigator spoke via telephone conference call with Dr. _____, Superintendent of USD #___, and with Dr. _____, Assistant Superintendent/Director of Special Education for the district.

The parent identified three individuals whom she believed had knowledge of facts related to the issue specified in her complaint. Before speaking to these individuals, the investigator obtained the written consent of the parent to disclose personally identifiable information with each and to discuss the issues related to this complaint. On July 20, 2021, the investigator spoke by telephone with _____, district preschool teacher. On July 20 and 23, 2021, the investigator spoke with _____, Instructional Coach for the district. The investigator spoke by telephone with _____, brother of the parent, on July 23, 2021.

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

- Audio recording of a May 18, 2021 eligibility team meeting
- Determination of Complaint July 4, 2021 written by the district superintendent

- Email dated June 28, 2021 from the parent to the assistant superintendent
- Email dated June 28, 2021 from the parent to the assistant superintendent
- Screen shot of a custody document provided by the parent

Background Information

This investigation involves a nine-year-old boy who will attend the fourth grade in his neighborhood school in USD ___ for the 2021-22 school year. According to the student's mother, the student was diagnosed by Children's Mercy Hospital with Tourette Syndrome at the end of kindergarten after having initially been determined to have a transient tic. Children's Mercy subsequently diagnosed Anxiety, Attention Deficit Hyperactivity Disorder (ADHD), and Developmental Dyslexia. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

The student's parents are divorced and share joint custody of the student. According to their custody agreement, both parents "have equal rights and responsibilities" with regard to decisions about their children's education.

Issue

In her complaint, the student's mother alleged that the district disclosed the student's personally identifiable information without her consent to individuals who were not part of the student's evaluation team.

In her complaint, the parent also alleged what she referred to as "bullying." In a letter to the parties dated July 6, 2021, Mark Ward, an attorney with Special Education and Title Services (SETS) for the Kansas State Department of Education (KSDE), stated that because "special education laws and regulations do not address bullying," the investigation of this complaint will be limited to the allegation regarding the confidentiality requirements of special education regulations.

Applicable Statutes and Regulations

Confidentiality of personally identifiable information (PII) in education 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. In addition, Kansas regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-50 have adopted by reference provisions in 34 C.F.R. 300.612 through 300.624 (federal regulations implementing the Individuals with Disabilities Education Act (IDEA)), regarding parental access to education records and confidentiality of personally identifiable information.

All school personnel (including contracted employees) are governed by confidentiality requirements of FERPA and the IDEA, both of which apply to students with disabilities.

FERPA and the IDEA require educational agencies to obtain parent consent prior to disclosing PII from education records to unauthorized parties unless certain exceptions apply (34 C.F.R. 99.30; 34 C.F.R. 300.622). FERPA regulations, at 34 C.F.R. 99.3, state that the term PII "includes, but is not limited to the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Federal regulations implementing the IDEA, at 34 C.F.R. 300.610 ensure "the protection of the confidentiality of *any* (emphasis added) personally identifiable data, information, and records collected or maintained..."

While FERPA protects the confidentiality of students' PII contained "in education records" (34 C.F.R. 99.30(a)), the IDEA protects the confidentiality of students' PII whether or not the PII is contained in education records (34 C.F.R. 300.610, 300.622(a)). The Office of Special Education Programs within the U.S. Department of Education stated in its November 23, 2015 *Letter to Weatherly* (67 IDELR 71, 19 FAB 24), that PII does not have to appear in an education record in order for it to be subject to the IDEA's confidentiality rules. The regulations implementing IDEA protect ***all*** personally identifiable information collected or

maintained pursuant to the IDEA, regardless of whether it is in an education record, with the caveat, that if the information is in an education record, then relevant FERPA exceptions would apply.
The regulations implementing IDEA, at 34 C.F.R 300.622(a), state that parental consent must be obtained before personally identifiable information is disclosed to parties. FERPA regulations provide several exceptions to the requirement to obtain parent consent before releasing PII contained in education records (34 C.F.R. 99.31). All of these exceptions also apply to the confidentiality requirements in the IDEA regulations (34 C.F.R. 300.622(a)). For example, FERPA allows the school to release PII contained in education records to school officials, including teachers, at the school where the student attends, whom the school has determined to have a "legitimate educational interest" (34 C.F.R. 99.31(a)(1)(i)(A)). The IDEA also allows districts to release PII to officials of participating agencies without first obtaining parental consent if that release is done for the purpose of meeting a requirement of special education laws and regulations (34 C.F.R. 300.622(b)(1)). "Participating agency" is defined at 34 C.F.R. 300.611(c) as "any agency or institution that collects, maintains, or uses PII, or from which information is obtained, under Part B of the Act [IDEA]."

Parent's Position

The parent asserts that the assistant superintendent spoke to a preschool teacher who was not a part of the evaluation team for the student and disclosed PII regarding the student and his parents.

It is also the position of the student's mother that someone who attended the May 18, 2021 evaluation team meeting is responsible for the disclosure of confidential information to a "coach" who was not part of the evaluation team. The parent contends that the coach subsequently shared this information with the parent's brother. According to the parent, her brother told her that he had heard that because of the student's "IEP meeting," the parent had "the ability to form a lawsuit against the district."

District's Position

The district contends that the assistant superintendent's disclosure of PII regarding the student to a district preschool teacher was related to the district's effort to include the student's father in the evaluation process.

The district concedes that the name of the parent was disclosed to a staff member who was not a part of the evaluation team but contends that no additional PII nor any information regarding a "lawsuit" was disclosed.

Investigative Findings

The student's mother referred the student for evaluation to determine his eligibility for special education services and gave her written consent for the evaluation to be conducted on February 22, 2021. The evaluation was initiated, and a meeting was scheduled for May 18, 2021 for the purpose of reviewing the results of the evaluation and determining whether or not the student was eligible for special education services.

As the May 18, 2021 meeting date approached, the student's father had not yet returned some of the documents sent to him by the evaluation team. The assistant superintendent contacted the principal of the student's elementary school to obtain information regarding how best to communicate with and ensure the participation of both of the student's parents. The principal suggested that the assistant superintendent speak with the preschool teacher whose classroom was in the building. The principal told the assistant superintendent that the student's sister was currently enrolled in the preschool classroom and noted that the preschool teacher had routinely communicated with both of the student's parents. The assistant superintendent then contacted the preschool teacher.

The investigator spoke in separate telephone conversations with the preschool teacher and with the assistant superintendent regarding this aspect of this issue. Both parties recalled that they spoke in the weeks before the student's May 18, 2021 evaluation/eligibility meeting, though neither could remember the exact date of their conversation. Both parties acknowledge that their conversation included the names of the student and his parents and referenced the evaluation process. Both parties stated that they briefly talked about the best way for the evaluation team to engage the student's father in the evaluation process. According to both the preschool teacher and the assistant superintendent, the preschool teacher suggested that the student's father might be more responsive to contact by telephone rather than by email. The assistant superintendent stated that he then passed that information on to members of the evaluation team who henceforth communicated with the student's father by telephone regarding assessment information. Following that

contact, the student's father returned documents which had previously been sent to him by members of the evaluation team.

In a telephone interview with the investigator, the preschool teacher stated that in addition to having been the teacher of the student's sister, she is also a friend of the student's father and has on occasion served as a babysitter for the student and his sister. The preschool teacher said that through her contact with the student's father, she had been made aware that the student was being evaluated by the district to determine his eligibility for special education services.

The investigator spoke in separate telephone conversations with the assistant superintendent, the parent's brother and a district "instructional coach" – the "coach" identified by the parent as being the person who shared confidential information with her brother. According to both the instructional coach and the assistant superintendent, they had a very brief conversation with each other regarding a parent who was reported to be upset about a recent meeting. Neither could recall exactly when their conversation took place. Both the assistant superintendent and the instructional coach stated that the assistant superintendent identified the complainant by name during their conversation, but neither party reported that any PII beyond the parent's name was disclosed.

The instructional coach stated that he was aware through previous conversations with the parent's brother that the student has special needs and assumed that the situation involved a special education action because the assistant superintendent is also the director of special education. However, the instructional coach stated that he did not recall being told of any special education action regarding the student and could not recall any mention of a "lawsuit."

When the instructional coach next saw the parent's brother, who is a personal friend, the instructional coach mentioned that he had heard that the parent was angry with the district. Both parties confirmed that a conversation about the parent ensued. Neither party could recall the exact date of that conversation, but both believed that it took place in the period shortly before May 26, 2021. Neither the instructional coach nor the parent's brother could provide the investigator with a detailed recollection of their conversation, but both characterized the instructional coach's comments about the parent as an "offhand" reference to the parent being "upset."

The parent's brother told the investigator that when he next saw the parent, he mentioned to her that he had heard that there was "activity" at school related to her being upset with the district. The parent's brother stated that has no specific memory of telling his sister about a "lawsuit." The parent's brother told the investigator that he may have "misconstrued" the instructional coach's comments and drawn conclusions based on his personal knowledge of the parent's interactions with the district but stated that he was glad that his sister had an avenue to voice her complaints regarding the district.

Summary and Conclusions

When speaking with the preschool teacher, the assistant superintendent did share the student's PII with the teacher. However, because the assistant superintendent was attempting to meet a requirement of special education laws and regulations – specifically the participation of the parents in the evaluation process – an exception to the requirement regarding the confidentiality of PII applies and parental consent for the disclosure of PII was not required. As stated above, 34 C.F.R. 300.622(b)(1) provides that parental consent is not required before PII is released to officials of participating agencies for purposes of meeting a requirement of special education statutes and regulations. A violation of special education statutes and regulations is not substantiated on this aspect of this issue.

No exceptions apply to the assistant superintendent's sharing of PII with the instructional coach. The district did not provide any information during the investigation indicating that this staff member had a "need to know" of the assistant superintendent's interactions with the parent. The district also did not provide any information during the investigation that would indicate sharing this information was done in an attempt to meet any requirement of special education statutes and regulations.

No evidence was found to show that any PII other than the name of the parent was disclosed to the instructional coach. Nonetheless, the sharing of the name of the parent and the fact that she was upset with the district set the stage for subsequent conversations between the instructional coach and the parent's brother and between the parent and her brother. At each step beyond the initial disclosure of the parent's name by the assistant superintendent, the parties to these subsequent conversations made assumptions based on their

personal knowledge of the situation that resulted in the parent's reporting that "because of [the student's] IEP meeting, [she could] form a lawsuit against the district…"

Because there is evidence to support the parent's contention that PII – specifically the name of the parent – was disclosed without her consent to an unauthorized party (the instructional coach), a violation of special education statutes and regulations is substantiated on this aspect of this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on the issue presented in this complaint. Specifically, a violation was substantiated with regard to 34 C.F.R. 300.622(a) which requires parental consent for the disclosure of personally identifiable information (PII).

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

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with 34 C.F.R. 300.622(a) by obtaining parental consent before disclosing PII to unauthorized parties.

2) a) Within 40 calendar days of the date of this report, USD #___ shall develop and submit to SETS for approval, a plan for the implementation of training for all special education staff including special education office staff as well as all district paraeducators and instructional coaches regarding the legal requirements identified as violated in this report and confidentiality of PII.

   b) Once the training plan described above under Item a) has been approved by SETS, USD #___ must implement that plan within 20 school days after SETS approval.

   c) Upon completion of training of identified staff, USD #___ shall submit to SETS a record showing the dates of training and an attendance log signed by all staff who participated in the training.

3) No later than 5 school days before implementing the approved training plan described in item 2)b) above, the administration of USD # ___ shall complete and submit to SETS a pre-training administrator survey. No later than 5 school days after implementing the training plan described in item 2)b) above, the administration of USD #___ shall complete and submit to SETS a post-training administrator survey. The SETS Dispute Resolution Coordinator will provide the survey and instructions in a follow-up communication with the USD #___ Superintendent.

4) No later than 5 school days after implementing the approved training plan described in item 2)b) above, every staff member who participated in the training shall complete and submit to SETS a post-training staff survey. The SETS Dispute Resolution Coordinator will provide the survey and instructions in a follow-up communication with the USD #___ Superintendent.

5) Further, USD #___ shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 20, 2021

DATE OF REPORT OCTOBER 20, 2021

This report is in response to a complaint filed with our office by _____, mother, 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 mother" or the "the parent."

The complaint is against USD #___ (_____ Schools) and the East Central Kansas Special Education Cooperative (ECKSEC). In the remainder of the report, USD #___ and ECKSEC may be referred to as the "school," the "district" or the "local education agency (LEA)."

The Kansas State Department of Education (KSDE) received the complaint on September 20, 2021. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on October 20, 2021.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on September 21, 2021and again on October 4, 2021 as part of the investigation. The parent did not respond to a request for an additional interview on October 6 or October 8, 2021.

USD #___ made the following school staff from _____ High School available for a telephone interview on October 5, 2021:

- Dr. [JH], Principal
- Ms. [BS], School Psychologist
- Ms. [NH], Special Education Teacher

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Daily Check-In Logs dated from the fourth quarter of the 2020-21 school year
- Daily Classroom Participation / Assignment Logs dated from the second semester of the 2020-21 school year
- IEP Goal Progress Reports for the September 16, 2020 IEP
- Multidisciplinary Staffing Summary dated September 2, 2021
- Individualized Education Program (IEP) dated September 7, 2021
- IEP Team Meeting Notes dated September 7, 2021
- Timeline of the September 17, 2021 incident
- Email dated September 17, 2021 at 1:45 p.m. from Ms. [NH] to Dr. [JH]
- Incident Report written by [JS], Corrective Reading Teacher
- School year 2021-22 Discipline History written by Dr. [JH]
- Letter to the parent written by Dr. [JH]dated September 21, 2021 scheduling a manifestation determination meeting and an expulsion hearing
- Letter to the parent written by Dr. [JH]dated September 21, 2021 re-scheduling the manifestation determination meeting
- Email dated September 24, 2021 to [RB], Superintendent of USD #___, and Dr. [JH] written by Samara Klein, parent's attorney
- District's Response to the allegations dated October 1, 2021
- Email dated October 15, 2021 from the parent to the Complaint Investigator
- USD #___ District Calendar for the 2021-22 school year
- The 2021-22 _____ High School Student Handbook

Background Information

This investigation involves a 14-year-old male student who is enrolled in the ninth grade at _____ High School in USD #___ for the 2021-22 school year. The student previously attended the _____ Middle School, also in USD #___. The student's most recent reevaluation was conducted on October 20, 2020 without assessment. At that time, the multidisciplinary team determined the student continued to be eligible for special education and related services under the exceptionality category of emotional disturbance. The student has received special education and related services since the

second grade when he was initially evaluated and determined eligible for services on October 27, 2014.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the mother raised one issue that 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, specifically the Behavior Intervention Plan (BIP), which allows the student to have his head down on his desk, during an encounter with the school resource office (SRO) on September 17, 2021.

Positions of the Parties

The parent believes the staff at _____ High School never wanted the student to attend their school and instead wanted him to attend the _____ Learning Center through ECKSEC. She reported the student was suspended during the second week of the school year. During a meeting on August 30, 2021, she stated that Dr. [JH], Principal, told her that they just can't have the student at their school due to not having the resources and that the student needed to go to the alternative school, _____ through ECKSEC. The IEP team met on September 2, 2021and Dr. [JH] was told the student wasn't going to _____ per his recommendations and that other options had to be implemented to help the student be successful at school.

Another IEP team meeting was held on September 7, 2021 to review and revise the annual IEP with the parent and student in attendance. The parent stated:

> At that time he was told that putting his head down was an option and that it seemed to be working and he was abusing it per his science teacher. That's when it was agreed upon that it could be continued. Later that day

> the student and I went to _____ School for a walk through and it was agreed upon that it wasn't the right fit for the student at this moment and he was told that he needed to be careful because there was a target on his back.

The parent alleges that USD #___ and ECKSEC failed to follow the student's BIP during an incident that occurred on September 17, 2021. The parent reported that the student's BIP allows him to place his head down on his desk during class when he is feeling overwhelmed and needing a break. She indicated that the student did this during his reading class on September 17, 2021 and, because he was not allowed to do so, the situation escalated into a disciplinary incident involving the SRO and ultimately resulted in a recommendation for expulsion from school.

USD #___ and ECKSEC reported the student's BIP states that the he will put his head down on the table when he does not want to do something or avoid a task. The replacement behavior in his BIP states that the student is to have his head up and be engaged in the class activity. The interventions in the BIP are to encourage the student to take a walk with an adult or to go work in the special education resource classroom instead of allowing the student to sit with his head down during class and not participate.

In the Response to the Allegation, USD #___ stated:

> USD #___ [and ECKSEC] strongly believes that we followed the student's Behavior Intervention Plan in this incident. The student was given ample opportunity to follow the replacement behavior at the direction of two teachers, a principal, and a School Resource officer. He finally complied at the last request only to go forward and attempt to destroy property as well as swear profanity at the principal. To protect himself and others he had to be restrained by the SRO. The total incident took approximately 15 minutes in the general education classroom and an additional five minutes once he left the classroom

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #___.

During the fourth quarter of the 2020-21 school year, the student had several incidents that led to detentions and suspensions while attending _____ Middle School. The student's IEP dated September 16, 2021 included three goals related to appropriate behavior in the school setting and a BIP.

The first day of the 2021-22 school year was August 18, 2021. On August 25, 2021, the student was suspended for three days for profanity directed at a staff member, a Level Four Disciplinary Referral per the 2021-22 _____ High School Student Handbook.

On September 2, 2021, a Multidisciplinary Staffing was held to discuss placement options for the student. In attendance at this meeting were both the middle school and high school principals, the school psychologist, the special education teachers, the school counselor, and the special education director from ECKSEC. This team reviewed past behaviors and interventions including the Project STAY observations and consultations with staff; discussed current supports at the high school including access to a para educator and the need for a review and possible revision to the BIP; updated the student's class schedule; and had the process for a change of placement to the alternative school explained. Following the staffing, the parent and student visited the _____ Learning Center at ECKSEC.

The IEP team, including the parent, met on September 7, 2021 to review and revise the annual IEP and the BIP. The BIP shows the student is only completing 25% of his assignments on time and has refused to do anything in three out of his seven classes. The Individual information About the Student section of the BIP states:

> The student will go through times in the school day where he might get upset about a certain situation, or encounter work that is difficult and want to shut down or refuse to do the school work. During these times, sometimes, the student can be redirected to refocus on school work or take a break from the situation. Other times, the student has a more

> difficult time with his emotions. Sometimes the student will not want to do a classroom assignments or follow directions to the point that he becomes defiant. When he reaches this point, he doesn't follow directions. He will try getting away from the authority figure, kick the chairs, and refuse to do anything, etc. It is at this time that the student might be taken to the time out room to remove him from a possible dangerous situation for himself or others.

The baseline for the target behavior states that the student puts his head down on his desk when asked to do work as a means of avoiding the task 85% of the time. The replacement behavior is for the student to have his head up and be engaged in the task at hand. The interventions for when the target behavior occurs are 1) for the student to go for a short walk with an adult for three minutes or less or 2) for the student to go work in the special education resource room.

The IEP team meeting notes reflect discussion of the student putting his head down in the classroom. [JS], Corrective Reading Teacher, stated that the student does put his head down in class but this is not overused. It was noted that English is a trigger for the student and that he can be very disruptive. The notes reflect the student is allowed to put his head down if overwhelmed as a coping skill and that he will ask to leave if he feels angry or feels like he is losing control. [NH], Special Education Teacher, clarified that the student is allowed to put his head down "for a little bit" to gain self-control if he is feeling overwhelmed but that he will be re-directed to take a short walk with staff or go to the resource classroom where he can work on the assignment if his head down behavior is being used as task avoidance rather than as a coping skill.

The BIP also contains a Crisis Management Plan that shows the consequence for a Level Four Disciplinary Incident involving school safety as "minimum – out of school suspension; maximum – 186-day expulsion."

On September 17, 2021, the student was in the Corrective Reading class. The lesson consisted of the teacher reading a passage to the class followed by a test over the material. The student refused a reading book to follow along while the passage was being read. He put his air pods in his ears and laid his head down on the desk while

the teacher read the passage. He was not disruptive but then refused to sit up at his desk and take the test. Ms. [JS] asked the student to go to the resource room to work two separate times but the student refused to comply or even respond.

Ms. [NH] was called and she came to the classroom and the student continued to lay his head on the desk and refuse to respond or comply with her requests to go to the resource room. Dr. [JH] was then called and the student continued to refuse to comply or respond to his requests. Bob Ward, the School Resource Officer (SRO), then came into the classroom and attempted to gain the student's attention but was ignored . At this point, Dr. [JH] had Ms. [JS] take the entire class to the cafeteria to complete the test.

The SRO asked the student three times to get up and go the resource classroom and the student finally responded that he was sleeping. After several more requests from the SRO, the student did get up from his desk and slammed the classroom door open, which resulted in the clock being knocked from the wall, falling and breaking. The student then made his way through the hallways to the resource room where he immediately put his head back down on the table.

Dr. [JH] was concerned with leaving the student in the resource classroom with other students while he was so angry so the student was asked to come to the office to cool down. According to Ms. [NH], "the student leaped up, kicked his chair and grabbed his backpack. When he kicked the chair, one of the tennis balls from the legs flew off and hit another student in the head." The student then left the classroom and began cursing at Dr. [JH].

Dr. [JH] reported that "the student then forcefully pushed open the cafeteria door, kicked a locker, went into the cafeteria and threw a chair dolly and chair. The SRO restrained him and told him if he didn't calm down he would be put in handcuffs." The student called his parent and went to the office to await her arrival.

Dr. [JH] reported that the profanity directed toward staff and the behavior displayed by the student compromised school safety. Both are considered Level Four Disciplinary Referrals and the student was assigned 10 days of out of school suspension with a due

process hearing. A manifestation determination meeting was also scheduled to determine if the student's behavior was a manifestation of his disability as required by the IDEA.

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Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.324(a)(1)(i) require that IEP teams to consider the use of positive behavioral interventions and supports, and other strategies, to address the any behavior that impede a child's learning or the learning of others. Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the student has a history of displaying behavior that impedes his learning and the learning of others. The student's IEP and BIP were reviewed and revised by the IEP Team, including the parent and the student, at an IEP Team meeting held on September 7, 2021.

The BIP identifies the target behavior as the student laying his head down during class as a means of task avoidance. The interventions for the target behavior are 1) for the student to go for a short walk with an adult for three minutes or less or 2) for the student to go work in the special education resource room.

In addition to these interventions, the parent and student also believe that the student was allowed to lay his head down as a coping strategy whenever he was feeling overwhelmed as a result of the discussion at the September 7, 2021 IEP Team meeting. While this is not clearly stated in the BIP, based upon the IEP Team Meeting Notes and Ms. Hasting's clarification, it appears that the student was allowed to lay his head down on his desk "for a short time" as a coping strategy but not as a means for task avoidance. It is noted that Ms. [JS], the Corrective Reading Teacher, was aware of this discussion as she was in attendance at the IEP team meeting held on September 7, 2021.

The disciplinary incident that occurred on September 17, 2021 initially began in the Corrective Reading class taught by Ms. [JS] when the student put his head down on his desk and placed his air pods in his ears. While it is not clear if laying his head down on his desk started as a coping strategy for being overwhelmed by the reading activity, it is clear that keeping his head down on his desk was task avoidance when he continuously refused to sit up at his desk and take the test.

Per the Intervention Plan in the BIP, Ms. [JS] asked the student to go to the resource room to work but the student refused to comply or even respond. Additional school staff including Ms. [NH], Dr. [JH] and the SRO also attempted to provide the intervention of having the student to go work in the resource room but, again, the student refused to comply or even respond. The other students in the Corrective Reading classroom were evacuated to the cafeteria and the student's behavior then escalated to include profanity and physical aggression which resulted in an unsafe school environment and the Crisis Plan consequences described in the BIP being followed.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to implement the BIP as written in the September 7, 2021 IEP on September 17, 2021.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 24, 2021

DATE OF REPORT: OCTOBER 20, 2021

This report is in response to a complaint filed with our office by _____, on behalf of her son, _____, and other unnamed eighth-grade students receiving special education services at the student's middle school. For the remainder of this report, _____ will be referred to as "the student." Ms. _____ will be referred to as "the student's mother," "the complainant," or "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on September 29, 2021. On September 29 and October 4, 5, and 7, 2021, the investigator spoke by telephone with Dr. JaKyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative. The investigator spoke by telephone with [TS], principal of the student's school, on October 5, 2021. On October 6, 2021, the investigator spoke in a conference call with the principal and two special education teachers from the school, Julie Jones and Valerie Dennis. Ms. Jones supports sixth and eighth grade students at the school and is the student's case manager. Ms. Dennis works with eighth grade students and co-teaches the student's math class.

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

- IEP for the student dated March 10, 2021
- Class schedule for the student
- District produced chart showing how and when special education services are being provided to the student

Background Information

This investigation involves a thirteen-year-old boy who is enrolled in the eighth grade in his neighborhood middle school. The student was diagnosed as having a Tic Disorder but does not take any medications. His current IEP includes goals related to reading, writing, and asking for help when needed.

Issue

In her complaint, the parent alleges the following:

> The district has failed to provide the special education services specified in this student's IEP and the IEPs of other 8th grade students.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.323(c)(2), require that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. State regulations, at K.A.R. 91-40-19(a), require that each school district, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP.

Parent's Position

The parent contends that she was informed during parent teacher conferences by two special education staff members that they were not providing services to the student in the general education classroom as specified in his IEP. The parent further contends that the student does not have a designated "case worker" (case manager) to oversee the student's special education service delivery.

District's Position

The district stipulates that not all of the services specified in the student's IEP have been provided since the start of the 2021-22 school year. The district also stipulates that some of the services required by the IEPs of other eighth grade students in the middle school have not been provided due to staffing shortages.

Investigative Findings

At Family Advocacy Day on September 17, 2021, the parent asked the student's general education math teacher if the student was receiving all of the special education services he was supposed to be receiving. The math teacher suggested that the parent speak to Ms. Dennis, the special education teacher who co-teaches the student's math class.

The parent recalls that two special education teachers were present during the September 17, 2021 conversation. Ms. Dennis has no recollection that a second special educator was present. However, both the parent and Ms. Dennis agree that Ms. Dennis told the parent that the student was in fact not receiving all of the services called for in his March 13, 2021 IEP because of staffing vacancies.

According to the executive director of special education for the district, two full time paraeducators have been assigned to the student's middle school since the start of the school year. Five special education teachers have also been assigned to the building since the beginning of the year, but a sixth position has remained unfilled. The district assigned two "instructional coaches" to the building to help provide coverage for the vacancy, but those instructional coaches were subsequently reassigned to buildings with even greater need. The executive director reports that the district attempted to provide the necessary general education coverage by changing student schedules and placing students in classrooms with special education support, but she stipulates that not every student's IEP requirements have been met.

The principal of the middle school as well as the special education teacher who spoke with the parent also confirmed in a telephone call with the investigator on October 6, 2021 that services for this student as well as other 8th grade students at the school have not been provided as required by the students' IEPs.

This student's March 13, 2021 IEP states that he was to receive 60 minutes of special education service in a general education setting for five days each week and 15 minutes of special education service outside of the general education setting every other week.

At the beginning of the 2021-22 school year, 60 minutes of special education support for the student in the general education setting was to be divided between two classes – science and English/language arts. Thirty minutes of

support was to be provided in each of these classes through the use of a paraeducator.

The science class support was provided beginning on the first day of the 2021-22 school year. However, the scheduled support in English/language arts was not provided consistently until September 20, 2021. No special education services were provided in the student's English/language arts class on

- August 12 and 13, 2021;
- August 16-18, 2021;
- August 23-27, 2021;
- August 30 through September 3, 2021;
- September 7, 8, and 10, 2021; or
- September 13-16, 2021.

An instructional coach provided the in-class support on August 19 and 20 and September 9, 2021.

On September 20, 2021, the district changed the student's schedule, placing him in an English/language arts class with paraeducator support. However, prior to this change, the district had failed since the start of the 2021-22 school year to provide a total of 11 hours of special education support to the student in the general education setting.

Special education services to the student outside of the general education setting were also not provided on a consistent basis. These services were first initiated on October 6, 2021 but had not been provided during the weeks of

- August 16-20, 2021;
- August 30 through September 3, 2021
- September 13-16, 2021; or
- September 27 through October 1, 2021.

In total, the district failed to provide 60 minutes (fifteen minutes on one day a week every other week for four weeks) of direct special education services outside of the general education setting.

As of the time of the writing of this report, the district had not yet filled the vacancy that contributed to the district's struggle to provide the services specified in the IEPs of students identified in this complaint.

Summary and Conclusions

Since the beginning of the 2021-22 school year, the district failed to provide this student with a total of 60 minutes of special education service outside of the general education setting and 11 hours of special education support in the general education setting. The district also stipulates that special education services for some (perhaps all) of the other eighth-grade students being served by the same group of service providers as this student were not provided because of the staffing vacancy specified in this report.

Corrective Action

Information gathered in the course of this investigation has substantiated a violation of special education statutes and regulations. Specifically, violations have occurred with regard to K.A.R. 91-40-19(a) which requires that each school district shall provide special education and related services to an exceptional child in accordance with the child's IEP.

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

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.A.R. 91-40-19(a) by providing special education and related services to an exceptional child in accordance with each child's IEP.

2) Within 40 calendar days of the date of this report, USD #___ shall develop and submit to SETS for approval, a plan for the implementation of 60 minutes of compensatory special education services to be delivered outside of the general education classroom to the student named in this complaint as well as 11 hours of compensatory special education services in the general education classroom.

3) Within 5 school days of the date the district receives approval of the plan described above under Corrective Action 2, the district shall contact the

parent to schedule a meeting to present the approved plan to the parent. The parent shall have the option of either accepting the plan as written, or accepting a portion of the plan, or rejecting it. The district shall notify SETS of the parent's decision regarding delivery of compensatory services, and shall report back to SETS once the compensatory services have been completed.

4) Within 40 days of the date of this report, USD #___ shall provide to SETS a summary of the actions it has taken to date to hire staff to fill the vacancy described in this report. The district shall then provide SETS with weekly reports of additional actions taken by the district to fill this vacancy until such time as the position is filled.

5) Within 40 days of the date of this report, USD #___ shall provide a list of all eighth-grade students for whom special education services were not provided during the 2021-22 school year due to the staffing vacancy at the center of this complaint.

6) Within 40 days of the date of this report, USD #___ shall present to SETS, for review and approval, a plan to immediately mitigate any further loss of service to eighth-grade special education students that would otherwise result from this staffing vacancy. This plan should be implemented in no more than 10 calendar days from the date the plan is approved by SETS.

7) For each of the students described above under Corrective Action 5, USD #___ shall provide to SETS a report which includes the following information:

    a) The name of the student;
    b) the services each of these students was to receive (including frequency, location, and duration);
    c) the specific services that were missed; and
    d) the amount of compensatory service each student is eligible to receive.

8) By no later than December 16, 2021, USD #___ shall submit to SETS, for review and approval, a plan for the delivery of compensatory services to every student determined to have lost special education services due to the staffing vacancy. The plan should include the following information:

a) How parents will be notified regarding their child's eligibility for compensatory service;
b) the specific plan for delivery of compensatory services to each eligible student;
c) how the decision of each child's parents regarding their acceptance or rejection of services will be documented; and
d) how the completion of compensatory services will be reported to SETS.

9) Further, USD #___ shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON SEPTEMBER 3, 2021

DATE OF REPORT: SEPTEMBER 30, 2021

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

Investigation of Complaint

On September 7, 15, 22 and 24, 2021, the investigator spoke via telephone with [SD], Director of Special Education for USD #___. The investigator spoke by telephone with the parent on September 23, 2021

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

- Confidential Educational Evaluation dated November 1, 2019
- IEP for this student dated April 14, 2021
- Email dated August 19, 2021 from the student's father to the student's special education teacher
- Email dated August 20, 2021 from the student's special education teacher to the student's father
- Email exchange dated August 17-18, 2021 between the parent and the student's special education teacher
- Email dated September 1, 2021 from the parent to the student's "team"
- Screen shot of text dated September 2, 2021 from the student to his father
- Email dated September 15, 2021 from the director of special education to the parents
- Online calendar for the 2021-22 school year for USD #___

- Observational notes and data sheets provided by the district covering the period of August 12 through September 10, 2021
- Audio recording of a September 7, 2021 meeting
- Assessment schedule for the district for the 2021-22 school year

Background Information

This investigation involves a 14-year-old boy who is enrolled in the ninth grade in his neighborhood high school. The student first received special education support at age three for articulation-related speech and language needs.

Occupational Therapy services were initiated when the student was in second grade. In April of 2016, following the completion of a reevaluation requested by the parents, the student was determined to have met special education eligibility criteria under the category of Autism.

Currently, the student receives his primary special education support through the SAIL classroom in his building. SAIL is a centralized program designed to serve students with social and interpersonal learning needs.

According to the student's current April 14, 2021 IEP, the student receives the following services:

- 75 minutes of specially designed instruction in a special education classroom for three days a week for study skills;
- 50 minutes of specially designed instruction in a special education classroom for two days a week on block days wherein the student is pulled from his English, math, science, and social studies classes to work on assignments from those classes;
- 15 minutes of specially designed instruction in a special education classroom one day a week on seven-period days wherein the student is pulled from English, math, science, and social studies to work on assignments from those classes;
- 75 minutes of specially designed instruction in a special education setting twice a week for seminar;
- 225 minutes of special education services three times a week in the general education setting for electives and social skills;

- 40 minutes twice a week on block days in general education core classes wherein a special education teacher serves as co-teacher to provide accommodations and modifications;
- 15 minutes once a week on block days in general education core classes wherein a special education teacher serves as a co-teacher to provide accommodations and modifications; and
- 15 minutes once a semester of transition services to discuss future class schedules and college/career.

On September 14, 2021, the director of special education for the district met with both of the student's parents to discuss their concerns. In an email dated September 15, 2021, the director summarized the following actions to be undertaken by the district to address issues covered in the previous day's discussion:

- Open a re-evaluation to obtain updated or new information in the following areas:
    - Speech (pragmatic language)
    - Sensory
    - FBA (to include social emotional)
    - Assistive Technology
- Establish break area designed to meet student needs
- Establish age appropriate reinforcers
- Establish movement opportunities in large classrooms
- Consider monthly scheduled review meetings to review data on an ongoing basis with a decision on these meetings to be made following completion of the re-evaluation.

The parent provided written consent for the reevaluation on September 17, 2021. The district anticipates that the reevaluation will be completed in early December 2021.

Issues

In her complaint, the parent asserts that the district has failed to implement two components of the student's April 14, 2021 IEP, stating that the district:

- failed to follow the student's behavior intervention plan, and
- failed to provide the state assessment accommodations specified in the student's IEP.

Issue One: The district failed to follow the student's behavior intervention plan.

Parent's Position

The parent contends that the district failed to provide four of the accommodations specified in the student's behavior plan by

- not providing reinforcers consistently (if at all) for work completion;
- not chunking assignments for reinforcement;
- not providing breaks or work in alternative locations after a certain amount of class time (i.e. 15 minutes); and
- not consistently providing alternative lunch/passing periods.

District's Position

It is the position of the district that the student's behavior intervention plan has been followed with regard to all areas specified in the parent's complaint.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.323(c)(2), require that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. State regulations, at K.A.R. 91-40-19(a), require that each school district, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP.

Investigative Findings and Conclusions

Provision of Reinforcers:

The student's April 14, 2021 IEP includes a Behavior Intervention Plan (BIP). According to the "Daily Preventative" section of the BIP, "a daily reinforcement incentive system to promote positive behavior and encourage motivation" will be utilized.

Additionally, the "Accommodations/Modifications/Supplementary Aids and Services" section of the student's April 2021 IEP contains the following statement:

> Throughout the school day, student will be provided with a concrete reinforcement system to maintain motivation and promote positive behavior.

The district contends that reinforcers in the form of food or breaks have been used with the student. However, according to the district, the student has at times opted not to accept these reinforcers.

The district provided the investigator with the following documents:

- Observational report completed by the special education teacher for August 16, 20, and 30, 2021;
- data sheets completed by the special education teacher for:
    - August 23 through August 27, 2021;
    - August 30 and 31, 2021; and
    - September 1, 2, and 3, 2021.

The district also provided data sheets reflecting student performance on three dates after this complaint was filed with KSDE on September 3, 2021.

Only three of the documents provided by the district include any reference to reinforcers prior to the date that this complaint was filed. Observational notes from August 20, 2021 show that during first period, the student was "prompted to ask to pace or break in SAIL – chose SAIL – [and was] offered reinforcement upon arrival to SAIL," choosing "down time on phone." Observational notes dated August 30, 2021 contain the statement "attempted to give preferred snack." The data sheet from September 2, 2021 includes the notation "time with preferred teacher."

A virtual meeting was held on September 7, 2021 for the purpose of clarifying the language of the student's behavior intervention plan and ensuring that there was a common understanding about the BIP and IEP. The building principal, the associate principal, special education teacher, a special education coordinator, a school psychologist, and both of the student's parents participated in that meeting, which was recorded. On the audio recording of the meeting, the team is heard discussing various reinforcers that have been provided to the student by the parents in the home setting and reinforcers which could be provided to the student following the meeting.

While the district provided documents reflecting the use of reinforcers on three occasions with the student, the district did not provide any evidence to show that

reinforcers were being provided to the student throughout every school day prior to September 3, 2021. No evidence of a "reinforcer menu" or a structured, concrete, daily reinforcement schedule was submitted by the district for consideration by the investigator.

The documents provided by the district include only three specific references to the provision of reinforcers to the student. While these notations show that the student was on occasion reinforced for positive behavior, the district provided no evidence to show that any type of "concrete" or "daily" reinforcement system was in place and consistently utilized by staff to motivate the student and encourage his positive behavior during the period of August 12 to September 3, 2021. A violation of special education statutes and regulations is substantiated for failing to provide reinforcers as required by the student's BIP within the IEP.

Chunking of Assignments:

The student's April 14, 2021 IEP contains one annual goal related to initiating non-preferred grade-level tasks and one annual goal related to completing these tasks. In order to encourage these goal behaviors and to reduce the incidence of inappropriate behavior, the "Daily Preventative" section of the student's BIP within the April 14, 2021 IEP states that "[the student] will receive modified or chunked assignments to allow room for reinforcement incentive system."

Additionally, the "Accommodations/Modifications/Supplementary Aids and Services" section of the student's April 14, 2021 IEP states "[The] student will receive modified or chunked assignments to allow room for reinforcement incentive system."

The district reports that when the student is working on a project or assignment that he is interested in, the student will at times reject the chunking modification. According to the district, chunking is offered to the student for every math assignment, but the student declines that accommodation for most assignments. The student is reported by the district to be more responsive to shortened assignments. The district also notes that the student has been offered reduced/shortened assignments in his English language arts (ELA) class.

The district provided no direct evidence to show that the student's assignments have been consistently "chunked" – broken down into smaller segments that allow staff to provide him with frequent positive reinforcement for work completion. Responses from the district suggest that while assignments have been shortened, the "chunking" of assignments has not been a consistently implemented practice. Under these

circumstances, a violation of special education statutes and regulations is substantiated for failing to chunk the student's assignments as required by the student's IEP.

Provision of Work Breaks or Access to Alternative Work Locations:

The "Daily Preventative" section of the student's BIP within the April 14, 2021 IEP states that "during block scheduling [the student will be provided with] multiple opportunities to receive instruction and take breaks. For ex: Attend 10-15 [minutes] of instruction, receive movement break and/or work opportunity in alternate location, return to class for another 10-15 [minutes] of instruction. Repeat for up to 3 opportunities in the allotted class time."

The district asserts that space has been provided within the SAIL room for the student to take breaks. At the meeting on September 7, 2021, the team discussed the availability of alternate work locations for the student. According to the special education teacher, the SAIL room had been available to the student at any time he asked to go there. The team discussed ways of making that setting more appropriate for the student's use. The team also discussed additional strategies for providing the student with appropriate breaks.

At the September 7, 2021 team meeting, the special education teacher proposed a newly developed data sheet that would reflect the offer of breaks for the student at 15-minute intervals. Data sheets provided by the district for the dates of September 8-10, 2021 show that the new data sheet format was implemented, and the student was offered breaks at 15-minute intervals beginning on September 8, 2021. This complaint was filed with KSDE on September 3, 2021.

The district has made the SAIL room available to the student for breaks or an alternate work setting. However, no evidence was provided by the district to show that, prior to September 8, 2021, the student was provided with work breaks on a structured, consistent basis. Under these circumstances, a violation of special education statutes and regulations is substantiated for failing to provide work breaks and access to alternate work locations as required by the student's BIP within the IEP.

Provision of Alternative Lunch/Passing Time:

According to the "Daily Preventative" portion of the student's BIP within the April 14, 2021 IEP, the student was to be provided with "advance notice of class ending to enable [the student] to utilize alternative passing periods."

The "Accommodations/Modifications/Supplementary Aids and Services" section of the student's April 14, 2021 IEP includes the following statement:

> The student will receive alternative passing time to transition from class to class.

On August 19, 2021, the student's father sent an email to the student's special education teacher regarding accommodations for the student during his lunch period. The student's father wrote:

> ...it is part of his IEP for him to have preferred passing periods. We need 100% alternate passing periods every time...[The student] is coming home a mess and these little things would really help take down the overall level of anxiety he accumulates throughout the day.

The special education teacher responded via email, stating:

> All of the staff that works with [the student] has been told that [he] must receive an alternate passing period. I will check in with each one of them again to ensure that they know that this is mandatory. I am sorry if this has not been happening but will make sure that it is being offered consistently and diligently.

According to the district, the student is consistently offered the opportunity for alternate passing times from all of his classes. If he has not opted to take an early release, staff offers the option of waiting to pass after the tardy bell for the next class period has sounded.

The district also reports that, on two or three occasions, the student has indicated that he wanted to take the passing period with peers, and was allowed to do so with special education staff maintaining proximity supervision in order to provide support should it be needed.

On September 14, 2021, the parents of the student met with the director of special education for the district. The director sent a follow-up email to the parents on September 15, 2021 summarizing their discussion. In that email, the director states that the parents had reported that the issue of a failure to provide the student with alternative passing periods had been resolved. In a telephone call with the investigator on September 23, 2021, the parent also reported that this issue had been resolved. A

violation of special education statutes and regulations is not substantiated for failing to provide alternative passing periods as required by the student's IEP.

Issue Two: The district failed to provide the state assessment accommodations specified in the student's IEP.

Parent's Position

The parent contends that when state assessments were conducted in September of 2021, the student was moved to an alternative setting only after the student's father called the school to report that the student was being tested in the classroom.

District's Position

The district states that no state assessments were conducted between the start of the school year and the parent's filing of this complaint. However, it is the position of the district that the student was provided with the accommodation specified in his IEP when the district English/reading assessment was administered.

Applicable Statutes and Regulations

As noted above under Issue One, federal regulations, at 34 C.F.R. 300.323(c)(2), require that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. State regulations, at K.A.R. 91-40-19(a), require that each school district, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP.

Investigative Findings

The "State or Districtwide Assessments" portion of the student's April 14, 2021 IEP states that the student will be provided with an "alternate setting and breaks" for state and district assessments in the areas of reading, math, science, social studies, and writing.

The "Accommodations/Modifications/Supplementary Aids and Services" portion of the student's April 14, 2021 IEP contains the following statement:

> Student will receive extended time on all assignments – up to three days – and tests – break into multiple days to loosen anxiety.

No state assessments were administered for ninth-grade students between the start of the 2021-22 school year on August 12, 2021 and September 3, 2021, the date this complaint was filed with KSDE. However, two district Measure of Academic Progress (MAP) assessments were conducted during that same period – math and English/reading.

The MAP testing window extended from August 16 to September 17, 2021. The student was to complete the math portion of MAP testing in the SAIL classroom on September 13, 2021 (after this complaint was filed), but was in what the district describes as a "heightened emotional state" and refused to log into the testing program. He was prompted when in the SAIL room throughout the remaining testing period to log into the testing site to complete the math assessment but refused to do so.

The district MAP assessment for English/reading was conducted over several days in the SAIL classroom. On September 2, 2021 at 8:06 AM, the student sent a text to his father stating, "They were having me do the map test and I was upset at the complications that come with a teacher across a giant building being in control of my test and them not gathering the code beforehand…". A data sheet for September 2, 2021 provided by the district showed that the student "was upset due to not knowing MAP test was being continued. There was miscommunication and [the student] did not believe he was going to receive his accommodations."
In response to the student's text, the student's father contacted the special education teacher to make sure the student was to be provided with an alternate location for the assessment. The student completed that assessment on September 2, 2021 in the SAIL classroom with the special education teacher present. Breaks were provided.

Summary and Conclusions

No state assessments were conducted between the start of the 2021-22 school year and September 3, 2021. However, district MAP testing was completed during this period. On September 2, 2021, the student became anxious believing that he was not going to be given the testing accommodation for his English/reading test as specified in his IEP. He texted his father who then contacted the special education teacher to ensure that the testing accommodations specified in his April 14, 2021 IEP were provided. The testing was conducted in an alternate setting (the SAIL room) where the student was monitored by the special education teacher who provided the student with breaks. A violation of special education statutes and regulations is not

substantiated for failing to provide assessment accommodations as required by the student's IEP.

Corrective Action

Technical assistance is available from the Assistant Director of TASN General Supervision, Timely and Accurate Data (GSTAD) if the district needs assistance in carrying out these corrective actions.

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on issues presented in this complaint. Specifically, a violation was substantiated with regard to 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-19(a), which require that districts, teachers, and related service providers provide special education and related services in accordance with a student's IEP.

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

1) Submit to KSDE Special Education and Title Services (SETS), within 40 days of the date of this report, a written statement of assurance stating that it will comply with 34 C.F.R. 300.323(c)(2) and K.A.R. 91-40-19(a) by implementing this student's IEP as written.

2) Within 40 days of the date of this report, USD#___ shall submit to SETS, for review and approval, a plan which includes specific strategies for documenting that the student is being provided with the following accommodations:

    a) Assignment chunking structured to provide specific opportunities for reinforcement;

    b) the creation and implementation of a daily, concrete reinforcement system designed to promote positive behavior and encourage motivation; and

    c) the continued provision of consistently scheduled opportunities for work breaks.

3) Within 2 school days of SETS approval of the plan specified in Corrective Action 2, USD #___ shall implement the approved plan.

a) By no later than June 6, 2022, USD #___ shall submit to SETS documentation verifying that the accommodations described above in Corrective Action 2 were implemented throughout the remainder of the 2021-22 school year until or unless the student's IEP team removes any or all of the specified accommodations from the student's IEP.

4) Within 40 days of the date of this report, USD #___ shall submit to SETS for review and approval a copy of the reinforcement plan being used for this student. That plan shall specify:

    a) the reinforcers/reinforcement strategies being used with the student; and

    b) the schedule or procedures staff will be using to determine how and when the student will earn reinforcement.

5) Within 2 school days of SETS approval of the plan specified in Corrective Action 4, USD #___ shall implement the approved plan.

    a) By no later than June 6, 2022, USD #___ shall submit to SETS documentation verifying that the reinforcement plan described above in Corrective Action 4 was implemented throughout the remainder of the 2021-22 school year.

6) Within 40 days of the date of this report, USD#___ shall submit to SETS for review and approval, a sample of documentation that will be used to show that the student has been provided with concrete, daily reinforcers.

7) By no later than June 6, 2022, USD #___ shall submit to SETS documentation that the concrete, daily reinforcers referenced above in Corrective Action 6 were provided to the student throughout the remainder of the 2021-22 school year until or unless the student's IEP team determines that the student no longer needs daily, concrete reinforcement.

8) a) Within 40 days of the date of this report, USD #___ shall develop and submit to SETS for review and approval a plan for training of general and special

education staff serving this student regarding the appropriate implementation of the elements of the student's BIP and accommodations/modifications specified above in Corrective Action 2.

b) Once the training plan described above under Item 5)a) has been approved by SETS, USD #___ must implement that training within 10 school days after SETS approval.

9) No later than 5 school days before implementing the approved training plan described in Corrective Action 5 above, the director of special education of USD #___ and the administrators of the student's school shall complete and submit to SETS a pre-training administrator survey. No later than 5 school days after implementing the training plan described in Corrective Action 5 above, the director of special education of USD #___ and the administrators of the student's school shall complete and submit to SETS a post-training administrator survey. The TASN GSTAD Assistant Director will provide the survey and further instructions in a follow-up communication with the district's Director of Special Education.

10) No later than 5 school days after implementing the approved training plan described in Corrective Action 5 above, every staff member who participated in the training shall complete and submit to SETS a post-training staff survey. The TASN GSTAD Assistant Director will provide the survey and further instructions in a follow-up communication with the district's Director of Special Education.

11) Further, USD #___ shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin, Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #___
ON JULY 12, 2021

DATE OF REPORT: AUGUST 11, 2021

This report is in response to a complaint filed with our office by_____, on behalf of her son, _____. For the remainder of this report, _____ will be referred to as "the student." Ms. _____ will be referred to as "the student's mother," "the complainant," or "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on July 13, 2021. On July 15 and 28, 2021, the investigator spoke via telephone conference call with Dr. _____, Superintendent of USD #___, and with Dr. _____, Assistant Superintendent/Director of Special Education for the district. The investigator spoke in a separate telephone call on August 10, 2021 with the assistant superintendent.

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

- Email dated January 27, 2021 from the parent to district staff
- Email dated March 2, 2021 from the parent to the school psychologist
- Email dated March 16, 2021 from the parent to the school psychologist
- Email dated April 5, 2021 from the parent to the school psychologist
- Email dated April 5, 2021 from the assistant superintendent to the building principal and school psychologist
- Email dated May 11, 2021 from the assistant superintendent to the parent
- Email dated May 13, 2021 from the assistant superintendent to the parent
- Email dated May 14, 2021 from the school psychologist to the parent
- Team Evaluation Eligibility/Identification Report dated May 18, 2021

- Staffing Record dated May 18, 2021
- Email dated May 19, from the parent to the school psychologist, building principal, and classroom teacher
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated May 18, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated May 28, 2021
- Email dated June 25, 2021 from the parent to the assistant superintendent
- Criteria and Procedures for Independent Educational Evaluation for the district
- Criteria and Procedures for Contract Educational Evaluation for the district
- Audio recordings of the May 18, 2021 evaluation/eligibility team meeting provided by the district and the parent
- Written statements provided by evaluation/eligibility team members regarding the two team meetings held prior to May 18, 2021 and the parent's allegation of predetermination

Background Information

This investigation involves a nine-year-old boy who will attend the fourth grade in his neighborhood school for the 2021-22 school year. According to the parent, the student was diagnosed by Children's Mercy Hospital with Tourette Syndrome at the end of Kindergarten after having initially been determined to have a transient tic. Diagnoses of Anxiety, Attention Deficit Hyperactivity Disorder (ADHD), and Developmental Dyslexia were subsequently diagnosed. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

In March of 2020, because of the COVID-19 Pandemic, the governor of the state of Kansas ordered the closure of all public school buildings for the remainder of the 2019-20 school year. At the beginning of the 2020-21 school year, instruction for this student was delivered under a remote learning model through his neighborhood elementary school. In October 2020, the student

was assigned to a new teacher at a different school and continued his instruction under the remote learning model. The student moved to in-person instruction at his neighborhood school on January 25, 2021. Title I Reading services were initiated in early February of 2021.

Issue

In her complaint, the parent raises three issues.

Issue One: The district predetermined the student's eligibility prior to the evaluation/eligibility team meeting and violated IDEA by depriving the student's parents the opportunity to meaningfully participate, thereby depriving the student of a free appropriate public education (FAPE).

Applicable Statutes and Regulations

An initial evaluation involves the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to assist in determining if the child is eligible for special education. The team shall not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child (34 C.F.R. 300.304(b)(1)-(2); K.S.A. 72-3428(b)(1)-(2)).

At the time the evaluation is completed and information is compiled, the team must make the determination of special education eligibility for the student using a two- pronged test: (1) whether the child is a child with an exceptionality (disability or giftedness) as defined in federal and state special education law; and (2) by reason thereof, has a need for special education and related services [K.A.R. 91-40-1(k)(1) and (w) and K.A.R. 91-40-10(a)(1)(A); 34 C.F.R. 300.8(a)(1) and 300.306(a)(1)].

The law permits school staff members of teams formed for the purpose of making evaluation and eligibility decisions, as well as IEP decisions, to engage in preparatory activities to develop or respond to a proposal that will be discussed later at a meeting [see 34 C.F.R. 300.501(b)(3) and K.A.R. 91-40-25(e)(1)-(2)]. In *T.W. by McCullough and Wilson v. Unified Sch. Dist. No. 259, Wichita, Kan.*, 136 F. App'x 122, 43 IDELR 187 (10th Cir. 2005), the Tenth Circuit Court of Appeals stated:

> Certainly, it is improper for an IEP team to predetermine a child's placement, and then develop an IEP to justify that decision. See *Spielberg ex rel. Speilberg v. Henrico County Pub. Sch.,* 853 F.2d 256, 259 (4th Cir. 1988). This does not mean, however, that district personnel should arrive at the IEP meeting pretending to have no idea whatsoever of what an appropriate placement might be. "Spielberg makes clear that school officials must come to the table with an open mind. But this does not mean they should come to the table with a blank mind." *Doyle v. Arlington County Sch. Bd.*, 806 F. Supp. 1253, 1262 (E.D. Va. 1992), aff'd No. 92-2313, 1994 WL 592686 (4th Cir. Oct. 31, 1994).

The team should try to reach consensus about the eligibility decision. However, if the team cannot reach agreement, the final decision rests with the person who serves as the Local Education Agency (LEA) representative at the eligibility determination meeting [see U.S. Department of Education Office of Special Education Programs *Letter to Richards* (January 7, 2010); Federal Register, Vol. 64, Appendix A to 34 CFR Part 300, Question 9, pp. 12473-12474, March 12, 1999]. If the parents disagree with that decision, they may then challenge the eligibility determination via the due process procedures in the IDEA.

Parent's Position

It is the position of the parent that the school team had, at the time of the eligibility meeting, already determined that the student was not eligible for special education services under an IEP. The parent provided excerpts from a May 16, 2021 evaluation/eligibility team meeting as support for her contention that the team had held previous meetings regarding the student's eligibility. The parent also asserts that the fact that the assistant superintendent signed the Eligibility/Identification Report indicating his agreement with the district's decision regarding the student's eligibility is proof that the decision was predetermined because the assistant superintendent was no longer present at the meeting when eligibility was discussed.

District's Position

The district asserts that district staff worked hard to assemble all the information necessary for the team to make a decision regarding the student's eligibility, and the team's final decision was not predetermined prior to the meeting. The district states that both in-house meetings prior to the eligibility

meeting were conducted to ensure that all data had been collected, and to clarify individuals' roles for the meeting. It is the district's position that parents and the outside evaluator were given ample opportunity to provide additional information at the evaluation/eligibility team meeting. When it became evident that differing opinions existed among team members, the building principal as the LEA representative made the final determination regarding eligibility based on all of the information collected throughout the evaluation process and presented during the evaluation/eligibility team meeting.

Investigative Findings

On January 27, 2021, the parent sent an email to the building principal, the assistant superintendent for the district, and the student's classroom teacher expressing continuing concerns regarding the student's performance. The parent wrote that the student was scheduled to have a full battery of tests at Children's Mercy Hospital on February 15, 2021. The parent stated that "depending on [the findings of the evaluation], we may need to reconvene for the 504 and possibly pursuing the need to escalate to an IEP to allow for additional support from special education services. We will see what happens, but I didn't want you to be blindsided by a possible request in the future."

The parent provided written consent for the district to conduct an initial evaluation on February 26, 2021.

On March 16, 2021, the parent sent an email to the school psychologist which included a copy of the report of the student's February 2021 evaluation at Children's Mercy. The parent also notified the school psychologist that an appointment was scheduled with the evaluating neurologist for March 30, 2021 for the purpose of reviewing the report and determining whether additional testing would be needed.

The parent sent the school psychologist an email on April 5, 2021 asking that the psychologist confirm receipt of the Children's Mercy report and provide an update on the testing being done or planned by the psychologist. The parent copied the student's neuropsychologist at Children's Mercy on her message, noting that he would be attending the eligibility meeting at the request of the parents.

On May 11, 2021, the assistant superintendent sent an email to the parent in which he stated:

> the purpose of [a meeting scheduled for May 18, 2021] would be to determine [the student's] eligibility for special education rather than [an IEP team meeting]…The focus of this meeting will be the evaluation report. It summarizes all of the information collected through the evaluation process. This includes parent concerns, the provided medical records, new assessment data, parent/student/teacher questionnaires, and classroom information. After reviewing all of the information the team has to answer two questions. The short version of both questions is below:
>
> 1) Does he have an exceptionality as defined by state and federal law?
> 2) Does he need specialized instruction?
>
> If the team answers yes to both of those questions, the team would proceed to develop an IEP that outlines goals for him and the services/supports to meet those goals. If the team does not determine that he is eligible, there should be a lot of quality information from this process to improve the 504 that he has in place.

On May 11, 2021, the school psychologist called an in-house staff meeting so that the team could ensure that a draft report of the team's evaluation was prepared and ready to send to the parents prior to the upcoming evaluation/eligibility team meeting. At the staff meeting, the team discussed administering additional tests to better inform their decision-making. The team also talked about what to do to encourage the student's father to return documents sent to him as part of the evaluation process.

On May 11, 2021, the parent sent an email to the members of the evaluation team proposing a 1-hour agenda for the upcoming evaluation/eligibility team meeting. The proposed agenda allowed 10 minutes for the review of testing results and 10 minutes for discussion of the student's eligibility for special education services which included a discussion of "what category[s] serves [the student's] educational needs best." The parent's proposed agenda allocated 25 minutes for a discussion of "how does [the student] learn best, programs and placement, goals, related services, other – curriculum, methodology, etc."

The assistant superintendent sent the parent an email on May 13, 2021 stating that "the primary focus [for the May 19, 2021 meeting] is reviewing all of the information that has been collected over the past few months in an effort to determine whether [the student] is eligible for special education services. [The school psychologist and the building principal] will provide a copy of the evaluation report tomorrow."

On May 14, 2021, the school psychologist emailed the student's mother and father a copy of a draft report of the district's evaluation. The portion of the report related to the "Basis for Eligibility Determination" was left incomplete.

A second in-house staff meeting was held on May 17, 2021. Additional information had been received from the student's father and was entered into a revised draft of the evaluation report. There was additional discussion regarding the facilitation of the upcoming May 18, 2021 meeting.

An eligibility meeting was held on May 18, 2021. Those present included the student's parents, the building principal, the student's classroom teacher, a special education teacher, a speech/language pathologist, an occupational therapist, a school psychologist, and a social worker. The hospital-based neuropsychologist who had evaluated the student at the request of the parents participated electronically for a portion of the meeting.

The audio recordings of the meeting provided by both the parent and the district show that the parents actively participated in the meeting. The complainant read two statements to the team and actively engaged in discussion about the needs of the student. The student's father asked questions of the neuropsychologist.

The Evaluation/Identification Report shows that the parent completed a questionnaire submitted to her by the team. Statements from the parent in response to the questionnaire were included in the "Parent Input" section of the report and reviewed at the evaluation/eligibility team meeting. Both of the student's parents completed elements of the Behavior Assessment System for Children 3rd Edition (BASC-3) which were also incorporated into the report. The parent was the "Home Rater" for the Behavior Evaluation System – Fourth Edition (BES-4) included in the report.

After the results of the evaluation had been reviewed, the school psychologist led the team through a discussion about eligibility, noting that there appeared to be no disagreement regarding the student's designation as exceptional (prong 1 of the eligibility determination). The school psychologist walked the team through indicators of need for service established by the Kansas State Department of Education and stated that a "need" for special education services had not been established. Other team members were offered the opportunity to speak in opposition to that statement, but none did except the parent. The parent objected to the recommendation that the student not be provided special education services under an IEP. When it became apparent that the team would not reach consensus, the LEA representative – the building principal – made the decision for the district, providing the parent with her reasons for determination.

In response to a request from the superintendent who was conducting an internal investigation of the parent's complaint, six members of the evaluation/eligibility team submitted written statements regarding the parent's allegation of predetermination.

The occupational therapist stated:

> The school team met on 5/11/2021 to review findings to date. It was decided at this meeting that the team desired additional educational testing (academic and executive function measures) to be completed by the school psychologist. The school team met again on 5/17/2021 to discuss these findings and concluded that appropriate testing had been completed and sufficient data was available for eligibility consideration at the meeting with parents scheduled for 5/18/2021. A proposed agenda was also reviewed and a meeting facilitator was identified at this time.
>
> I did not participate in procedural violations that prevented [the student] from receiving an appropriate education. In fact, not only did I not participate in predetermination, I left the meeting on 5/18/2021 unsure if I agreed with the proposal. For that reason, I chose not to immediately sign the eligibility report. I took additional time to carefully consider the discussion, the concerns, and totality of the data presented. At a later date, and after this additional time to reflect on this student's strengths and needs, I did agree with the

> evaluation findings. While I recognize the presence of a disability, I agree that [the student] does not require specially designed instruction beyond what can be provided through general education.

In her statement, the student's classroom teacher wrote:

> … the team came together during the [evaluation/eligibility team] meeting to make a decision based on data from every team member. My contribution was data collected from daily work. Even after the meeting, standardized test scores proved my determination of saying no to an IEP as they were above grade level, district, and state standards.
>
> An in-house meeting occurred on Tuesday, May 11th, from 11:00-11:30 in the conference room at Sunflower. All testing facilitators (OT, SPED, Speech, Psych) discussed the tests that were given to see if more extensive testing needed to be given. Scores were not given at that point. Items discussed were about tests that had a timer and were there alternatives to use since we know that child doesn't perform well against a timer. The BASC did not identify a need for services therefore other testing options were discussed to see another angle.
>
> A second in house meeting was held on Monday, May 17th, from 11:00-11:30 in the conference room at Sunflower. The two prongs were discussed so each team member knew how to respond based on their data.
>
> Both meetings were formalities so the team knew items were covered. No predeterminations were made; simply data talk occurred. As the classroom teacher, I felt every area was thoroughly covered to get the best data gathering possible.

The school psychologist wrote:

> Each special education evaluation is conducted on an individual basis. Students are brought into the evaluation process with no predetermination of whether the student will meet special education requirements. All efforts are made to ensure that the

> student's rights, along with parental rights are protected. Special education determination is not made simply at the request of a member of the evaluation team but needs to meet strict legal requirements. This is done not only to ensure access to education by all disabled students but to prevent discriminatory behavior that would place a student in Special Education incorrectly... The team members, including myself, made decisions based on the data collected throughout the evaluation. We considered parental input and outside information during the evaluation process.

Additionally, the school psychologist wrote that it was her opinion that:

> [This] student, like many others, [is a student] whose needs can be met in the General education setting. It is my belief that he is, and will continue to, make gains in the General Education classroom with his peers, if given the opportunity to participate with them... He has made great gains with this support. These gains are documented and included in the evaluation.
>
> 2 In-house meetings were held to discuss findings and plan for the initial evaluation meeting.
>
> The first meeting was to review our assessment data, verify that there weren't any discrepancies in the data and confirm that we as a team were not missing anything in the evaluation process. Once the first meeting was completed and the data reviewed, it was determined that some additional information should be collected to complete the evaluation. This included assessment and observation which were included in the draft evaluation.
>
> The second in-house involved planning on the part of the team members as to the flow of the meeting to keep the meeting moving in a way that would allow for presentation of all information. The goal was to ensure the meeting would go smoothly and involve all team members, including parents.

The special education teacher wrote:

> [In addition to the academic testing she had administered, she] had also reviewed his MAP and Fastbridge data. Although [the student's]

> scores had dipped during his winter testing, his fall testing was on grade level even after our extended time off due to Covid-19 and his spring data that he had completed had shown improvements.
>
> I feel that our team followed protocol and even with the information provided by parents and doctors were correct in determining that [the student] did not qualify for an IEP. I believe [the student] would benefit from an updated 504 with the accommodations recommended from the family's doctor and any other additional recommendations from the [evaluation/eligibility] team.

The speech and language pathologist wrote:

> ...what ultimately led to my decision of him not being eligible was the fact that his reading test scores were going up. If at any point he had plateaued, I think I would have had a different answer. Classroom teacher was not concerned with his performance, and for special education, we have to show a need for special services in the classroom and we have to show that the interventions that were in place were no longer working. He was receiving TITLE services and he was improving. He also had a 504 in place that could have been updated based on what his doctor was recommending.
>
> For special education, we also have to keep in mind that students need to be in the least restrictive environment. There are many factors that go into determining eligibility and we can't look at one single test or score. Based on all of the information, results and clinical judgement, I did not think [the student] needed special education services.
>
> This student's eligibility was not predetermined. We had an in-house meeting on 5/11/21 as we often do to discuss results of our individual testing as well as go over any other data such as MAP scores, classroom performance etc. In fact, our last meeting led us to do further testing prior to the eligibility meeting because we wanted to cover more areas and look further into reading which is why [the school psychologist] and I discussed giving the GORT [Gray Oral Reading Tests]. Initially, I had planned on giving it to see if we could find an area of weakness, but then it was decided that it may be better if she gives it as I do not typically work on reading in the

> school setting. As a team, we also decided to give the Behavior Rating Inventory of Executive Function (BRIEF) because mom was concerned with executive functioning and his doctor who spoke at the eval meeting had stated that it could be an area of concern in the future due to his current diagnosis of Tourette's Syndrome.

The physical therapist stated:

> I did participate in meetings related to [the student] prior to our [evaluation/eligibility team] meeting, but we were not moving towards a predetermined outcome. We did discuss which tests were being administered, if results warranted additional testing which may reveal more information, and times that individuals were pulling him for coordination purposes.

The assistant superintendent was present for the first 2 hours of the evaluation/eligibility team meeting during which time the majority of the results of the evaluation were reviewed. During the remaining twenty minutes of the meeting, the team wrapped up the review of assessment data and moved on to determining eligibility.

In a telephone conversation with the investigator, the assistant superintendent stated that while he left the evaluation/eligibility team meeting at the request of the parent, he remained in the school building and spoke with district team members after the meeting. According to the assistant superintendent, the team reviewed with him the discussion of the prongs of eligibility which had been covered during the meeting while parents were present. Following that discussion, the assistant superintendent signed the Eligibility/Identification Report to show that he agreed with the team's decision.

Summary and Conclusions

Two planning meetings were convened by the district prior to the evaluation/eligibility team meeting on May 18, 2021. These meetings were held so that the staff members on the team could determine whether any additional testing information was needed in order to complete the initial evaluation and prepare a draft of the Evaluation/Identification Report that would be shared with the parents prior to the May 18, 2021 evaluation/eligibility determination meeting. At the second planning meeting, there was additional discussion with

regard to the facilitation of that upcoming eligibility meeting and to plan the best way to present the evaluation data. The investigation uncovered no evidence to substantiate that the district team discussed the student's eligibility during these meetings. In separate written statements, team members asserted that they did not predetermine eligibility for the student prior to the May 18, 2021 meeting.

Prior to May 18, 2021, both the assistant superintendent and the school psychologist sent emails to the parent stating that the purpose of the upcoming evaluation/eligibility meeting was to determine whether or not the student met the criteria for designation as an exceptional child and needed special education services.

The parent contributed information to the evaluation, responding to questionnaires provided by the district and completing "home" portions of two of the assessments included in the Evaluation/Identification Report. The student's father also provided his input with regard to one of these assessments.

At the May 18, 2021 evaluation/eligibility team meeting, both parents were active contributors. Additionally, the neuropsychologist who evaluated the student at parent request in February 2021 spoke to the team and answered questions from the district and the student's father.

The parent anticipated that the district's evaluation of the student would lead to his being determined eligible for and in need of special education services, but team members from the district did not determine that the student *needed* special education – the second prong of eligibility determination. When it became clear that the parent and the district did not agree about the student's eligibility for special education services, the LEA representative made the final decision for the district. The school psychologist completed a prior written notice document reflecting the district's decision and provided that document to the parent.

After the meeting, the assistant superintendent met with district staff to review the eligibility discussion that had occurred after he left the meeting. Following that discussion, both the assistant superintendent and the occupational therapist signed the Eligibility/Identification Report and indicated that they agreed with the conclusions reached by the team.

Evidence shows that both parents provided input into the district's initial evaluation of the student and contributed actively during the evaluation/ eligibility team meeting. Additionally, the outside evaluator hired by the parent to complete an evaluation of the student was given the opportunity to speak to the team. The parents and the district asked questions of that evaluator during the meeting. While the district did hold two planning meetings prior to May 18, 2021, there is no evidence that district team members predetermined the student's placement prior to the evaluation/eligibility team meeting. Under these circumstances, a violation of special education statutes and regulations is not substantiated on this issue.

Additional Investigative Findings

Evaluation Report:

As noted above under Issue One, a written report of the findings of the evaluation team must be developed [K.A.R. 91- 40-10(a)(1) and (e); 34 C.F.R. 300.306(a)(2) and 300.311(a)]. Each school staff member of the evaluation team must certify in writing whether the report reflects that member's conclusion [K.A.R. 91-40-10(a)(2); 34 C.F.R. 300.311(b)]. The district must provide the parent with a copy of the evaluation report and the documentation of determination of eligibility [K.A.R. 91-40-10(b); 34 C.F.R. 300.306(a)(2)].

The evaluation report serves as the documentation of the child's eligibility. There are specific requirements for reporting the eligibility determination [K.A.R. 91-40-10(a)(1), (e); 34 C.F.R. 300.306(a)(2) and 300.311(a)]. The evaluation report must include the following statements:

a) The determination of whether the child has an exceptionality;
b) the basis for making the determination, including an assurance that the determination was made in accordance with applicable laws and regulations;
c) the relevant behavior noted during the observation of the child;
d) the relationship of that behavior to the child's academic functioning
e) the educationally relevant medical findings, if any;
f) for a child suspected of having a specific learning disability, the report must also include documentation of the following:

    i) an indication of whether the child does not achieve adequately for the child's age or meet State-approved grade- level standards; AND

ii) an indication of whether the child does not make sufficient progress to meet age or State-approved grade-level standards OR the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development; AND
iii) the determination of the team concerning the effect of the following factors on the child's achievement level:

- A visual, hearing, or motor disability;
- intellectual disability;
- emotional disturbance;
- cultural factors;
- environmental or economic disadvantage; or
- limited English proficiency.

At approximately the 2-hour and 8-minute point in the audio recording of the May 18, 2021 evaluation/eligibility team meeting, the school psychologist, as the facilitator of the meeting, began a review of the "Basis for Eligibility Determination" portion of the report, addressing "the two prongs of exceptionality." Question 1 of the report asks, "Does the child exhibit an exceptionality?" The school psychologist states, "I don't think there's any argument with that first prong, that we are meeting that, and I think that the team would agree with that."

Question 2 of the report asks, "Does the child need special education?" In response to this question, the school psychologist addressed six of the eight "Indicators" outlined under the category of "Other Health Impairment" (OHI) in the "Eligibility Indicators" guidance document issued by the Special Education and Title Services (SETS) section of the Kansas State Department of Education (KSDE).

While the team considered the student for eligibility under the category of Specific Learning Disability (SLD) in addition to OHI, the team did not review the six indicators under the category "Specific Learning Disability" included by KSDE in the Eligibility Indicators document during the meeting.

In the course of this investigation, the investigator determined that the parent was given copies of the Eligibility/Identification Report completed by the district. However, the "Basis for Eligibility Determination" portion of the report was not completed on any copy of the report – either the draft or final versions – that

were maintained by the district or provided to the parent. The evaluation report failed to address the following required elements:

- documentation of whether or not the student has an exceptionality;
- a statement of the basis for making the determination;
- eligibility factors related to specific learning disability; and
- what the report labels "exclusionary factors" (limited English proficiency and a lack of instruction in reading or mathematics) required for determining eligibility.

The district stipulates that the parent was not provided with a completed evaluation report.

Because the district failed to provide a completed evaluation report to the parent which contained required elements related to eligibility determination, a violation of special education statutes and regulations has been identified.

Prior Written Notice

Prior Written Notice (PWN) must be provided to the parent when a district refuses a parent's request to initiate or change the identification, evaluation, educational placement, or provision of special education and related services (FAPE) to the child [K.S.A. 72-3430(b)(2)(B); 34 C.F.R. 300.503(a)(2)].

The PWN provided to parents for each proposed or refused special education action must contain all of the following specific information:

- a description of the action proposed or refused; and
- an explanation of why the school proposes or refuses to take the action; and
- a description of each evaluation procedure, assessment, record, or report the school used as basis for proposed or refused action; and
- a description of the other options the agency or IEP team considered and reasons why they were rejected; and
- a description of any other factors relevant to the proposal or refusal; and
- a statement that the parents have parental rights under special education law; and
- sources for parents to contact to assist in understanding special education law. [K.S.A. 72-3432; 34 C.F.R. 300.503(b)]

The PWN is to be written in language understandable to the general public [K.A.R. 91- 40-26(b); 34 C.F.R. 300.503(c)(1)(i)].

On May 18,2021, the district provided the parent with a PWN that the student was not eligible for special education, stating that "special education services are not necessary to enable your child to receive educational benefits in accordance with his/her abilities or capabilities." The PWN form also stated that "Special Education is not initiated at this time," because "this action is proposed to align with Special Education Law." As stated on the PWN form, "it was considered to initiate Special Education, this was rejected due to Eligibility Criteria."

While the audio recording of the May 18, 2021 evaluation/eligibility team meeting shows there was discussion of the student's eligibility for special education, the basis for the decision to deem the student ineligible was not – as described above - documented in the Eligibility/Identification Report provided to the parent. Further, the PWN form did not provide an explanation for the district's decision beyond a reference to "law" or "eligibility criteria" that are not commonly understood by the general public. The terms used by the district in the PWN form fail to provide the parent with a clear explanation for its actions. Under these circumstances, a violation of special education statutes and regulations is identified.

Issue Two: The evaluation/eligibility team purposefully ignored the findings of the independent educational evaluation obtained at parent expense despite the IDEA requirement that the results of such an evaluation be considered when making decisions regarding the provision of a FAPE.

Parent's Position

The parent asserts that the evaluation/eligibility team failed to consider data provided by an outside educational psychologist when making decisions regarding the student's eligibility for special education services. It is the opinion of the parent that the district "ignored all of his findings and recommendations." The parent contends that the district was not willing to address the explanations of the neuropsychologist and the parent that the student would benefit from special education services and failed to address the opinion of the neuropsychologist regarding assessment measures used by the district.

District's Position

The district asserts that the input of the neuropsychologist was considered by the evaluation/eligibility team. While not in agreement with the neuropsychologist's opinion regarding the provision of an IEP for the student, the district states that input from the neuropsychologist will be shared with the student's 504 team for their use in revising the student's 504 Accommodation Plan.

Applicable Statutes and Regulations

If the parent provides the school district with an independent educational evaluation (IEE) that meets the district's criteria for an IEE, the results of the IEE shall be considered by the district in any decision made with respect to the provision of FAPE to the child [K.A.R. 91-40-12(e); 34 C.F.R. 300.502(c)(1)]. However, courts have consistently held that, although the school district must *consider* the results of an IEE, there is no obligation to adopt the evaluator's recommendations or conclusions [See for example *G.D. v. Westmoreland Sch. Dist.*, 17 IDELR 751, 930 F.2d 942 (1st Cir. 1991); *T.S. v. Board of Educ. of the Town of Ridgefield*, 20 IDELR 889, 10 F.3d 87 (2nd Cir. 1993); *R.Z.C. v. North Shore School District*, 73 IDELR 139, 755 F. App'x 658 (9th Cir. 2018)]..

Investigative Findings

Prior to giving her written consent (on February 26, 2021) for the school district to evaluate the student, the parent obtained an independent educational evaluation for the student on February 15, 2021, which was conducted by a pediatric neuropsychologist at Children's Mercy Hospital. Upon completion of that evaluation, the neuropsychologist provided the parent with a report of his findings which the parent subsequently shared with the district.

When developing the Evaluation/Identification Report reviewed with the parent at a May 18, 2021 evaluation/eligibility meeting, the team cited several of the tests administered by the neuropsychologist including:

- the Vineland Adaptive Behavior Scales, 3rd Edition (Vineland-3);
- the Behavior Assessment System for Children, 3rd Edition (BASC-3);
- the Differential Ability Scales, 2nd Edition (DAS-II);
- the Wechsler Intelligence Scale for Children, 4th Edition (WISC-IV); and
- the Kaufman Test of Educational Achievement, 3rd Edition (KTEA-3).

The results of each of these assessments were included in the school district's evaluation/eligibility report.

The pediatric neuropsychologist participated via Zoom in a portion of the May 18, 2021 evaluation/eligibility team meeting. The audio recording of that meeting shows that the team adjusted the meeting schedule to facilitate the participation of the neuropsychologist, pausing the meeting to allow for his input when he became available. The neuropsychologist shared information related to his evaluation and answered questions from the district for more than twenty minutes. District staff sought the input of the neuropsychologist regarding executive function and fluency issues and the necessity for accommodations and modifications. The student's parents also interacted with the neuropsychologist, asking him to share additional information with the group.

Various staff members referenced the neuropsychologist's findings at subsequent points throughout the meeting.

Summary and Conclusions

The evaluation/eligibility team included data from the February 15, 2021 IEE in their Evaluation/Eligibility Report. Additionally, the neuropsychologist participated in the May 18, 2021 evaluation/eligibility team meeting and responded to questions from staff and parents. Because there is evidence to show that the team considered the results of the outside evaluation obtained by the parent, a violation of special education statutes and regulations is not substantiated on this issue.

Issue Three: The parent is requesting that all costs related to the independent educational evaluation of the student at public expense (IEE) – including mileage and lost opportunity costs – be paid for by the district.

Parent's Position

The parent asserts in the complaint that she has and will incur costs beyond the actual billed charge for each of three assessments as part of an IEE scheduled to occur between July 26 and September 30, 2021. Specifically, the parent contends that the district should compensate the parent as follows:

- $525.00 for 7.5 hours for time spent researching independent evaluators that meet the district's established criteria, communicating with those evaluators, scheduling appointments, obtaining necessary referrals;
- $804.00 for the loss of three day's work for the parent to take the student to three IEE appointments; and
- $184.24 for mileage reimbursement for the parent to transport the student to his IEE appointments.

The parent alleges that the district has refused to respond to a June 25, 2021 email referencing these additional costs. To resolve this issue, the parent proposed in her complaint that the district send her a certified check for a total of $1,513,24 by no later than October 1, 2021.

District's Position

The district contends that, prior to receipt of this complaint, it was unaware that the parent was specifically requesting the school district to reimburse her for mileage and lost opportunity costs.

Applicable Statutes and Regulations

After a school district completes an evaluation, the parents have the right to ask for an independent educational evaluation at public expense if they disagree with the school district's evaluation [K.A.R. 91-40-12(a)(1); 34 C.F.R. 300.502(b)(1)]. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the child in question [K.A.R. 91-40-1(ff); 34 C.F.R. 300.502(a)(3)(i)]. Public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent [K.A.R. 91-40-12(b)(2)(B)(i); 34 C.F.R. 300.502(a)(3)(ii)].

If the parent requests an independent educational evaluation, the school must provide information to the parent about where an IEE may be obtained and the school district's criteria applicable for IEEs [K.A.R. 91-40-12(b)(2)(A); 34 C.F.R. 300.502(a)(2)]. In addition, if a parent disagrees with the school district's evaluation and requests an IEE at public expense, the school district must, without unnecessary delay, either file a due process complaint to request a

hearing to show that its evaluation is appropriate, or ensure that an IEE is provided at public expense [K.A.R. 91-40-12(b); 34 C.F.R. 300.502(b)(2)(i)-(ii)].

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained must be the same as the criteria that the school uses when it initiates an evaluation. These criteria may include the location of the evaluation and the qualifications of the examiner. The credentials of the independent evaluator or evaluators must be comparable to the school's evaluators. The school may set reasonable limitations on the costs for which it will be responsible. The school may have to exceed those costs if necessary to ensure that the independent educational evaluation meets the child's unique needs. [K.A.R. 91-40-12(g); 34 C.F.R. 300.502(e)].

A parent is entitled to only one independent education evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees [K.A.R. 91-40-12(a)(2); 34 C.F.R. 300.502(b)(5)].

The special education formal complaint process is one of the parent rights (procedural safeguards) afforded under federal and state special education law [K.A.R. 91-40-51; 34 C.F.R. 300.151 through 153]. When filing a complaint, a complainant must include a statement alleging that within the past year, a violation of federal or state special education laws has occurred [K.A.R. 91-40-51(a)(1), (b)(1); 34 C.F.R. 300.153(b)(1), (c)].

Investigative Findings

On May 19, 2021, the parent sent an email to the school psychologist, classroom teacher and building principal stating, "I am formally requesting an independent evaluation at the school's expense without delay. Per the Kansas State Special Education: When the parents ask for an independent evaluation at school expense, the school must provide it or begin a due process hearing to show that its evaluation is appropriate."

On May 27, 2021, the assistant superintendent sent an email to the parent stating that the school psychologist would be following up with a PWN regarding the request for an IEE.

The district provided the parent with a PWN dated May 28, 2021 informing the parent that her request for an IEE had been accepted. The parent was also provided with information regarding the district's criteria and procedures for

contract educational evaluations as well as its criteria and procedures for independent educational evaluations.

On June 25, 2021, the parent sent an email covering a number of topics to the assistant superintendent. Included in that email was the following statement:

> We are now forced to seek further independent testing at district expense because of the district's denial of a necessary IEP. Additionally, this doesn't come without further expense to [the student's] family in the way of time off of work, gasoline expense, vehicle maintenance, the stress of knowing your child is not receiving an appropriate education despite a clear need, unethical actions by the district, as well as myriad other concerns.
>
> Dr. Bloom of Clinical Psychology and Consulting Services [KC metro] will be completing further testing and will be billing the district…Children's Mercy Hospital [KC metro] will be completing the speech/language evaluation and occupational therapy re-evals and billing the district.

The investigator found no evidence to show that the parent made a specific request prior to the filing of this complaint for district reimbursement of mileage or lost opportunity costs for the parent related to either the scheduling of the IEE or to transporting the student for the evaluation sessions. The email excerpted above references "further expense to [the student's] family" and lists general categories of these expenses, but does not make any demand for reimbursement of these expenses.

The IEE is currently scheduled to be completed as of September 30, 2021.

Summary and Conclusions

The parent made a request for a district-funded IEE for the student on May 19, 2021. On May 28, 2021, the district provided the parent with prior written notice that her request for the IEE had been accepted. On June 25, 2021, the parent sent an email to the assistant superintendent on a variety of topics. In the email, the parent noted that the student's family would incur "further expense" related to the IEE, but no request was made by the parent for the district to cover any of these expenses. It was only when the parent filed this

complaint on July 12, 2021, that the district became aware of the parent's specific desire to have mileage and lost opportunity costs reimbursed related to the IEE which will not be completed until the end of September.

The parent is not alleging that a violation of special education statutes and regulations has already occurred. Rather, the parent is asserting that these costs should be covered by the district as a resolution to her complaint. The district has not yet refused to provide the requested reimbursement. The district must now decide whether it will cover the mileage and lost opportunity costs specified by the parent or whether it will decide to request a due process hearing to object to the IEE.

The filing of a complaint related to the district's responsibility to cover the costs of the IEE is at this point premature because the parent did not make a request to the school district for reimbursement of "further expenses" related to the IEE and thus, the school district has not had the opportunity to decide whether it will pay those extra costs or file for due process. Under these circumstances, a violation of special education statutes and regulations is not substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has identified areas of noncompliance with special education statutes and regulations. Specifically, violations were substantiated with regard to:

- K.A.R. 91-40-10(a)(1) and (e); 34 C.F.R. 300.306(a)(2) and 311(a) which outline specific requirements which must be addressed in the report provided to parents upon completion of an evaluation; and
- K.S.A. 72-3432; K.A.R. 91-40-26(b); 34 C.F.R. 300.503(b) and (c)(1)(i) which require that prior written notice must be provided to a parent whenever the district refuses the parent's request to initiate or change the identification, evaluation, educational placement, or the provision of special education and related services (FAPE) to the child. These laws also require that the PWN must include, among other things, an explanation of why the district refuses to take the action, and it must be written in a language understandable to the general public.

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

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with:

   - K.A.R. 91-40-10(a)(1), (e); 34 C.F.R. 300.306(a)(2), and 311(a) by providing parents with copies of evaluation reports containing all required elements; and
   - K.S.A. 72-3432; K.A.R. 91-40-26(b); 34 C.F.R> 300.503(b) and (c)(1)(i) by providing parents with PWNs that include, among other requirements, an explanation of why the district proposes or refuses to take the action and by writing PWNs in a language that is understandable to the general public.

2) Within 40 calendar days of the date of this report, USD #___ shall provide both of the student's parents and SETS with: a) a final Evaluation/Identification Report which includes a completed Basis for Eligibility Determination section, and b) a revised Prior Written Notice of the district's refusal resulting from the May 18, 2021 evaluation/eligibility team meeting. The prior written notice must be written in a language that provides the parent with a clear understanding of the explanation for the district's refusal to find the student eligible.

3) a) Within 40 calendar days of the date of this report, USD #___ shall develop and submit to SETS for approval, a plan for the implementation of training regarding the required elements for all evaluation reports and prior written notice for all special education staff in the district responsible for the completion of eligibility determination portions of evaluation/identification reports and prior written notice forms.

   b) Once the training plan described above under Item a) has been approved by SETS, USD #___ must implement that plan within 20 school days after SETS approval.

   c) Upon completion of training of identified staff, USD #___ shall submit to SETS a record showing the dates of training and an attendance log signed by all staff who participated in the training.

4) No later than 5 school days before implementing the approved training plan described in item 3)b) above, the assistant superintendent/director of special education of USD #___ shall complete and submit to SETS a pre-training administrator survey. No later than 5 school days after implementing the training plan described in item 3)b) above, the assistant superintendent/director of special education of USD #___ shall complete and submit to SETS a post-training administrator survey. The SETS Dispute Resolution Coordinator will provide the survey and instructions in a follow-up communication with the USD #___ Superintendent.

5) No later than 5 school days after implementing the approved training plan described in item 3)b) above, every staff member who participated in the training shall complete and submit to SETS a post-training staff survey. The SETS Dispute Resolution Coordinator will provide the survey and instructions in a follow-up communication with the USD #___ Superintendent.

6) Further, USD #___ shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #501
ON OCTOBER 7, 2021

DATE OF REPORT NOVEMBER 10, 2021

This report is in response to a complaint filed with our office on behalf of _____ by _____. Mr. _____ has been appointed the education advocate for this student by Families Together and, as such, has all of the rights of a parent under the law regarding special education. In the remainder of this report, _____ will be referred to as "the student" and Mr. _____ will be referred to as "the parent" or "the complainant."

The complaint is against USD #501 (Topeka Public Schools). In the remainder of the report, USD #501will be referred to as the "school," the "district" or the "local education agency (LEA)."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on October 7, 2021; however, the complainant did not deliver a copy of the complaint to the school district at the same time it was delivered to the KSDE. The KSDE delivered a copy of the allegations to the school district on October 11, 2021. For this reason, the 30-day timeline to investigate this complaint ends on November 10, 2021.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on October 13, 2021. The complainant did not respond to a request for an additional interview on either October 14, 2021 or November 4, 2021but did respond in writing to a questionnaire on November 5, 2021.

USD #501 made the following school staff available for a telephone interview on November 5, 2021:

- Dr. Jennifer Harrington, Director of Special Education
- Richard, Bolejack, Special Education Consulting Teacher at the Shawnee County Juvenile Detention Center
- Lori Kopp, General Counsel for USD #501

On November 9, 2021, USD #501 made the following school staff at the Shawnee County Juvenile Detention Center available for a telephone interview:

- Sarah Jennings, Classroom Teacher
- Stephanie Allen, Classroom Teacher

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) dated January 28, 2021 and amended on April 23, 2021 developed by the IEP team in USD #430
- Phone Log dated between August 25, 2021 and September 21, 2021 written by Tom Ross, Special Education Consulting Teacher at Shawnee County Juvenile Detention Center
- Email dated September 20, 2021 at 3:03 p.m. from Phoebe Nordyke, Communication Specialist in the Superintendent's Office, to Dr. Harrington
- Email dated September 21, 2021 at 7:37 a.m. from Mr. Bolejack to Dr. Harrington
- Notice of Meeting dated September 23, 2021 scheduling an IEP team meeting for September 28, 2021
- IEP dated September 28, 2021 developed by the IEP team in USD #501
- Conference Summary / IEP Team Considerations dated September 28, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent (PWN) dated September 28, 2021and signed by the parent on October 14, 2021
- Topeka Public Schools Release of Information Form signed by the parent on September 30, 2021

- Email dated October 15, 2021 at 10:44 a.m. from Andrea Watts, Coordinator of the Shawnee County Juvenile Detention Center, to Dr. Harrington
- Email dated October 15, 2021 at 1:18 p.m. from Mr. Bolejack to Dr. Harrington
- Email dated October 21, 2021 at 11:29 a.m. from Susan Christiansen, Consulting Teacher, to Dr. Harrington
- Email dated October 26, 2021 at 11:08 a.m. from Mr. Ross to Dr. Harrington
- Response to the Allegations dated October 27, 2021 written by Dr. Harrington and Ms. Kopp
- Questionnaire dated November 5, 2021 completed by the parent
- USD #501 District Calendar for the 2021-22 school year

Background Information

This investigation involves a 17-year-old male student who is eligible for special education and related services under the exceptionality category of emotional disturbance. He has been incarcerated at the Shawnee County Juvenile Detention Center since June 11, 2021 and USD #501 is responsible for providing both general education and special education services to the students housed in this facility. The student previously attended Horton High School in USD #430 (South Brown County School District) where he received special education services.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised two issues that were investigated.

> ISSUE ONE: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), shared personally identifiable information without appropriate written consent with the Shawnee County Juvenile Detention Center and KVC Kansas (foster care provider) during the past 12 months.

Positions of the Parties

The parent reported that confidential information about the student was shared with the juvenile detention center staff and the foster care contractor without his consent. He indicated that Andrea Watts, Coordinator of the Shawnee County Juvenile Detention Center, told him that all of the education records were shared and he believes that there has been an on-going sharing of information between USD #501 and the other agencies beginning with the student's admission in June 2021.

However, the parent advocate did not provide any specific information about what personally identifiable information was shared, the date(s) the information was shared, or to whom the information was shared. The complainant bases this allegation on his conversation with Ms. Watts, information shared with him during the September 28, 2021 IEP team meeting, and one email; however, the specific email was not provided to be reviewed and considered by the investigator.

Dr. Harrington acknowledged that the educational records received were shared with the teachers and administrators at the Shawnee County Juvenile Detention Center but noted that these are USD #501 staff members who are responsible for providing both general and special education services to students housed at the Shawnee County Juvenile Detention Center. Through an internal investigation, Dr. Harrington found that none of the staff at the Shawnee County Juvenile Detention Center reported sharing any personally identifiable information with either the jail staff at the Shawnee County Juvenile Detention Center or the staff from KVC Kansas, the foster child contractor.

The district reported that the parent requested personally identifiable information be shared with the KVC Kansas and the Shawnee County Juvenile Detention Center at the IEP team meeting scheduled for September 28, 2021 but held on September 29, 2021 due to a scheduling conflict. School staff provided a release of information form and the parent gave written consent to share this information on September 30, 2021. The LEA believes the student's personally identifiable information was appropriately kept confidential as required by all state and federal regulations.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #501.

The student was incarcerated in June 2021 at the Shawnee County Juvenile Detention Center. USD #501 is responsible for providing general education and special education services to students housed in this facility.

Ms. Watts was employed by USD #501 as the Coordinator at the Shawnee County Juvenile Detention Center. Mr. Ross and Mr. Bolejack were employed as the Special Education Consulting Teachers at the Shawnee County Juvenile Detention Center. The staff's first day of employment for the 2021-22 school year was July 23, 2021.

Ms. Jennings and Ms. Allen were employed as classroom teachers at the Shawnee County Juvenile Detention Center. August 12, 2021 was the first day of school of the 2021-22 school year for USD #501.

The student's special education records were requested from the previous school district at the beginning of August, 2021. Dr. Harrington reported that the student's educational records from USD #430, the previous school district, were received on September 9, 2021.

It is noted that Ms. Watts was unable to be interviewed as part of this investigation because she is no longer employed by USD #501. Dr. Harrington reported that Ms. Watts accepted a position in another agency and her last day of employment was October 29, 2021. However, the district provided an email written by Ms. Watts in their documentation where she stated, "I didn't have any contact with a KVC worker".

Mr. Ross reported in writing and Mr. Bolejack reported both in writing and in an interview that no information regarding the student was shared with staff from KVC Kansas. Ms. Jennings and Ms. Allen both stated that they did not share any information about the student with any staff from another agency.

The Conference Summary / IEP Team Considerations dated September 28, 2021document that the parent requested USD #501 share personally identifiable

information between the Shawnee County Juvenile Detention Center and KVC Kansas. A Release of Information Form was provided on September 29, 2021 and returned signed by the parent on September 30, 2021.

Documentation shows that no requests for the student's records had been received by USD #501as of October 21, 2021.

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Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.622(a) require that school districts obtain written consent from the parent or guardian of a student prior to disclosing personally identifiable information to a third party. However, federal regulation implementing the IDEA at 34 C.F.R. 300.622(b)(1) allows personally identifiable information to be released to officials of participating agencies for the purposes of meeting the requirements of the IDEA. This exception includes sharing education records without parents' written consent in order to continue to provide special education and related services when a student transfers from one school district to another.

In this case, the student was incarcerated at the Shawnee County Juvenile Detention Center in June 2021. USD #501 is responsible for providing both the general education and special education services to the student and appropriately obtained the educational records from USD #430, the previous school district, without the written consent of the parent. These records were appropriately shared with the staff providing educational services at the Shawnee County Juvenile Detention Center.

Interviews with district staff and documentation provided by the district showed that no personally identifiable information was shared with KVC Kansas. No documentation was provided by the complainant to substantiate that any information had been shared with KVC Kansas staff.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to obtain appropriate written consent prior to sharing personally identifiable information with the Shawnee County Juvenile Detention Center and KVC Kansas (foster care provider) during the past 12 months.

The Complaint Investigator notes that the documentation from the IEP meeting including the IEP document, the PWN, and the Conference Summary / IEP Team Considerations are all dated September 28, 2021 but interviews with school staff indicated that the IEP team meeting was actually held on September 29, 2021due to a scheduling conflict. This inconsistency causes confusion and could contribute to future miscommunication between the parties.

> ISSUE TWO: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to include the parent in the IEP team meeting held for the student and then failed to respond appropriately to the parent's request for an IEP team meeting during the past 12 months.

Positions of the Parties

The parent reported Ms. Watts told him that USD #501 conducted an IEP team meeting when the student was initially incarcerated at the Shawnee County Juvenile Detention Center. He indicated that he was not invited to that IEP team meeting and that a second IEP team meeting was finally held at the end of September but only after his multiple requests to schedule a meeting.

He reported that he initially requested an IEP team meeting on August 25, 2021in a phone conversation with one of the consulting special education teachers after learning of the first meeting that he did not attend. He indicated that he called 11 to 15 times and left messages but that no one would return his phone calls. He finally contacted the Office of the Superintendent on September 20, 2021 and an IEP team meeting was held on September 29, 2021.

USD #501 acknowledged that Ms. Watts mistakenly told the parent that an IEP meeting was held when the student was initially placed at the Shawnee County Juvenile Detention Center. Dr. Harrington reported that Ms. Watts had assumed an IEP meeting had been held when the student transferred into the Shawnee County Juvenile Detention Center but upon further investigation learned that no meeting had been scheduled. Ms. Watts subsequently worked with Mr. Ross and Mr. Bolejack to schedule an IEP team meeting for September 28, 2021 and contacted the parent to make him aware of her mistaken understanding.

USD #501 disputes the allegation that they failed to respond appropriately the parent's requests for an IEP team meeting. Dr. Harrington acknowledged that the parent had multiple conversations with the school staff at the Shawnee County Juvenile Detention Center but indicated the educational advocate never requested an IEP team meeting in any of those interactions. She reported that the first request for an IEP team meeting was received on September 20, 2021 when the parent contacted the Superintendent's Office and complained of trying to get "an IEP signed" for the past two weeks with a minimum of 11 phone calls to school staff with no response. Once this request was received, a notification for an IEP meeting was sent to the parent on September 23, 2021. The IEP meeting scheduled for September 28, 2021 and held on September 29, 2021 with the parent in attendance.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #501.

The findings of Issue One are incorporated herein by reference.

An email dated September 20, 2021 written by Patricia Nordyke to Dr. Harrington stated:

> I just received a call from the parent in regards to the student and an IEP. He stated that is trying to get an IEP signed and has left messages for Tom or Todd, not sure of the name on the voicemail . . . He has left 11 messages and has not received any contact back. He has been trying to get this done for over 2 weeks. He said he spoke with the principal and social worker about this and it was shared that they would get it taken care of but still has not had any contact.

An email dated October 15, 2021 at 10:44 a.m. written by Ms. Watts stated:

> There was no IEP meeting held prior than 9/28. When the student arrived, I had started the transition into the JDC [Juvenile Detention Center] program and mistakenly assumed that one may have been held prior to me joining the team. After I researched and investigated, I discovered one was not held and worked with Mr. Ross (once school officially started) to

> get one scheduled. I also contacted the educational advocate and let him know that one had not been held and we would work with him to get it scheduled.

An email dated October 15, 2021 at 1:18 p.m. written by Mr. Bolejack stated:

> I only invited him [the parent] to one IEP team meeting and it was scheduled for 09/28/2021, but held on 09/29/2021 due to a scheduling conflict. The meeting date for the IEP was scheduled on 09/23/2021. This being only 5 days notice, he agreed to waive the 10 day notice.

Mr. Bolejack confirmed this information during an interview conducted on November 5, 2021.

The Phone Log kept by Mr. Ross documented phone calls were made between the parent and himself between August 25, 2021 and September 21, 20201. Mr. Ross summarized his contacts with the parent in an email dated October 26, 2021 by indicating that he made the parent aware that the district was still waiting to receive the educational records from the previous school district and that a meeting would be held once those records were received.

Ms. Jennings and Ms. Allen both indicated that they were unaware of any IEP team held prior to September 29, 2021 and, if one was held, neither was in attendance. Ms. Allen stated that she attended the September 29, 2021 IEP team meeting and the IEP Meeting Participants list from that IEP confirms she was in attendance.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.322(a) require school districts to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate.

In this case, Ms. Watts initially shared inaccurate information regarding an IEP team meeting for the student which led to the impression that an IEP team meeting had been held without the parent being provided the opportunity to participate. However, interviews and documentation found that only one IEP team meeting was held for the

student by USD #501 following his incarceration at the Shawnee County Juvenile Detention Center. This IEP team meeting was held on September 29, 2021 with the parent in attendance.

In addition, federal regulation implementing the IDEA at 34 C.F.R. 300.324(b) require school districts to respond to a parent's request to review and revise a student's IEP as appropriate. The IDEA does not specify a timeline for the district to respond to a parent's request but the KSDE has recognized 15 school days as a reasonable amount of time.

In this case, based upon the misinformation about an IEP team meeting being held without the parent's knowledge initially provided by Ms. Watts, it is reasonable to believe that the parent contacted the Shawnee County Juvenile Detention Center staff to request that an IEP team meeting be scheduled so that he could participate.

Because the student was transferring from another LEA, USD #501 informed the parent sometime on or about August 25, 2021 that an IEP team meeting would be scheduled once the educational records were received. The interviews and documentation indicate that the educational records were received from the previous school district on September 9, 2021.

While it is unclear when and how many contacts the parent made to the school staff at the Shawnee County Juvenile Detention Center, it is clear that he was frustrated with a lack of prompt responses and reached out to the Office of the Superintendent on September 20, 2021. Following that contact, USD #501 gave the parent a Notification of Meeting on September 23, 2021 for an IEP team meeting scheduled for September 28, 2021with the parent waiving the required 10-day timeline for providing the notification. The IEP team meeting was held on September 29, 2021 due to a scheduling conflict, which is 15 school days from the date the educational records were received by the LEA.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to include the parent in the IEP team meeting held for the student and then failing to respond appropriately to the parent's request for an IEP team meeting during the past 12 months.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
BLUE VALLEY PUBLIC SCHOOLS, USD #229
ON DECEMBER 17, 2021

DATE OF REPORT: DECEMBER 29, 2021

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with Mark Schmidt, Assistant Superintendent of Special Education for Blue Valley Public Schools, on December 20 and 21, 2021.

In completing this investigation, the complaint investigator reviewed the following material provided by the parents with their complaint:

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated January 23, 2020
- Psychology Evaluation Final Report dated February 3, 2020
- Reading data from the 2019-20 school year
- Student Progress Monitoring Graphs (Acadience Reading) for the 2019-20 school year
- Speech-Language Evaluation completed in September 2020
- Evaluation Report draft dated October 14, 2020
- Specific Learning Disability
- Notes regarding an Eligibility Assessment Meeting dated October 26, 2020 taken by a student advocate
- Special Education Initial Evaluation eligibility determination dated November 16, 2020
- Email exchange dated June 9, 2021 between the student's mother and the school psychologist

- Email dated June 20, 2021 from the parents to the Assistant Superintendent

The investigator also reviewed an email dated July 27, 2021 from the Assistant Superintendent to the parents.

Background Information

The student is an eight-year-old girl. In January of 2020, when she was six years old and enrolled in first grade in the district, she was referred for special education evaluation by her parents. In February of 2020, the student was diagnosed with dyslexia, ADHD, and Generalized Anxiety Disorder at Children's Mercy Hospital. When schools were closed by order of the governor of Kansas in March of 2020 due to COVID-19, the student's evaluation was paused.

The student did not return to the district for the 2020-21 school year, but the parents did bring the student to the school so that the evaluation to determine her eligibility for special education services could be completed. An eligibility meeting was held on November 20, 2020. The team determined that the student was not in need of special education services, and therefore, not eligible for special education.

In June of 2021, the parents met with the Assistant Superintendent to discuss the possibility of a future transfer of the student to a school other than her neighborhood school. Following the meeting, the Assistant Superintendent also directed the parents to information regarding Child Find for students enrolled in private schools should they decide to have the student reevaluated for special education. The district has not received a request from the parents for the reevaluation of the student.

The student was not enrolled in the district for the 2021-22 school year.

Applicable Statutes and Regulations

Formal complaint is one of the methods parents of children with exceptionalities have to resolve special education-related disagreements with the school district. When filing a complaint, parents must allege that the district is not complying with the requirements of the Individuals with Disabilities in Education Act (IDEA), the Kansas Special Education for Exceptional Children Act, or the corresponding federal or state regulations. The formal complaint must be for a situation that occurred in the 12-month period preceding the receipt of the complaint by the Kansas State Department

of Education. (See K.A.R. 91-40-51(a) and (b).)

Issues

In their complaint, the parents raised three issues:

Issue One: The IDEA guarantees the right to a Free and Appropriate Public Education (FAPE). The district has violated the student's rights by not assessing the correct areas defined on the prior written notice and consent for evaluation form (PWN). Because not all areas were assessed, the student did not have the opportunity to be correctly identified, and therefore, also does not have services provided in all area of concern through an individualized educational program appropriately designed to meet her unique needs.

Parents' Position

In their complaint, the parents point specifically to an evaluation that was initiated at the request of the parents in January of 2020. The eligibility determination meeting related to that evaluation was conducted on November 20, 2020. The parents allege that the district

- failed to conduct a comprehensive evaluation;
- failed to address the student's social/emotional concerns;
- evaluated the student in areas not identified on a prior written notice and consent form;
- did not consider all areas of suspected disability; and
- discounted information provided by the parents and the student's teachers when determining that the student did not need special education services.

Conclusion

Because this issue alleges violations related to a special education evaluation and eligibility decision that occurred more than 12 months prior to the date this complaint was received by the Kansas State Department of Education, this issue was not investigated.

Issue Two: The elementary school in which the student was enrolled has failed to support the student's emotional and academic needs.

Parents' Position

In their complaint, the parents state that they are concerned about the mental health of the student and assert that the learning environment at the school has directly impacted her emotional stability and self-confidence. The parents state that they are concerned that the student has a negative attitude towards the public schools because of the way she felt while attending. The parents assert that following the district's evaluation of the student in the Fall of 2020, she was resistant to return to the school.

The parents allege that, during the student's Kindergarten year (school year 2018-19), the school did not start the Child Find process for the student despite expressed concerns from the parents and the teachers and numerous absences.

Conclusion

Building climate is not addressed in special education statutes and regulations. Further, allegations regarding the district's failure to implement Child Find activities for the student prior to the parents' referral of the student for a special education evaluation in January 2020 pertain to a situation that occurred outside the 12-months prior to the receipt of this complaint. For these reasons, this issue was not investigated.

Issue Three: (Per the complaint) "[The student] is unable to access a FAPE without intense and sustained resources to meet her disability needs without meeting Prong 2 evaluation criteria."

Parents' Position

The parents assert that they did not agree with Prong 2 findings of the student's initial evaluation for special education as they stated in an evaluation team meeting on November 20, 2020. The parents contend that the student's first grade teacher, a reading specialist, and a speech and language pathologist identified areas of concern. It is their position that the student had been provided with intense and sustained resources but was still not achieving above benchmark levels.

The parents further assert that the district's general education curriculum was inadequate to meet the needs of a student with dyslexia such as their daughter and that district staff was not well trained regarding dyslexia.

Conclusion

In this issue, the parents are again alleging a violation related to a situation that occurred in November of 2020, more than twelve months prior to the receipt of the complaint by the Kansas State Department of Education. Therefore, this issue was not investigated.

Corrective Action

For reasons described above, the three issues presented by parents in this complaint were not investigated. No corrective actions are required.

Right to Appeal

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212. That notice of appeal must be delivered to Special Education and Title Services, designee of the State Commissioner of Education, within 10 calendar days from the date of this report. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which is included below.



Diana Durkin, Complaint Investigator

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

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290
ON DECEMBER 3, 2021

DATE OF REPORT: DECEMBER 31, 2021

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on December 6 and 7, 2021. On December 6, 2021, the investigator spoke by telephone with Dr. Joshua Robinson, Assistant Superintendent/Director of Special Education for the district.

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

- Materials submitted by the parent in the formal complaint received by the Kansas State Department of Education (KSDE) on December 3, 2021 which included the following:
    - selected sections of a Score Report;
    - excerpts from the Team Evaluation Eligibility/Identification Report dated May 18, 2021;
    - a portion of the Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated August 23, 2021; and
    - a parent-developed transcription of an excerpt from the May 18, 2021 Eligibility Team meeting
- Complete copy of Score Report dated May 10, 2021

- Team Evaluation Eligibility/Identification Report dated May 18, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated August 23, 2021 (complete document)
- Woodcock Johnson IV Tests of Achievement (WJ IV ACH) Form A protocol dated March 29, 2021
- Woodcock Johnson IV Tests of Cognitive Abilities (WJ IV COG) protocol dated April 5, 2021
- User Qualifications Guide for the Woodcock-Johnson IV Tests of Cognitive Abilities (WJ IV COG) and WJ IV ACH provided by the test producer
- WJ Perspectives: Getting to Know the Woodcock-Johnson IV test of Achievement and Oral Language developed by the test producer
- College transcript for the individual who administered the WJ IV ACH
- License granted by the Kansas State Board of Education to the special education teacher
- License granted by the Kansas State Board of Education to the school psychologist
- Educator Credentials for the school psychologist
- Audio recording of a May 18, 2021 Eligibility team meeting
- Eligibility/Identification Report dated May 18,2021
- Online course catalogue for Fort Hays State University
- Online course catalogue for Emporia State University

Background Information

This investigation involves a ten-year-old boy who is enrolled in the fourth grade in his neighborhood school. The student was diagnosed by Children's Mercy Hospital with Tourette Syndrome at the end of Kindergarten after having initially been determined to have a transient tic. Diagnoses of Anxiety, Attention Deficit Hyperactivity Disorder (ADHD), and Developmental Dyslexia were subsequently diagnosed. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

Issues

In her written complaint, the parent presented two issues. In a telephone conversation with the investigator on December 6, 2021 and in a subsequent email dated December 6, 2021, the parent agreed to allow her complaint to be broken into three separate issues for the sake of clarity. The investigator then informed the district of this modification via email and telephone on December 6, 2021.

Issue One: The district allowed an unqualified staff member, whose only training regarding the Woodcock-Johnson IV Achievement (WJ IV ACH) test had been provided by the district, to administer the test to the student.

Applicable Statutes and Regulations

Special education regulations require that any standardized tests that are given to a child must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. (34 C.F.R. 300.304(c)(1)(iv) and (v) and K.A.R. 91-40-9(a)(4)(B)).

Parent's Position

It is the position of the parent that because the special education teacher had not received either specific training on the administration of the WJ IV ACH from the company that developed the test or specific instruction through college/university coursework on the administration of the WJ IV ACH, the special education teacher was not qualified to administer the test.

District's Position

It is the position of the district that the special education teacher was fully qualified to administer the WJ IV ACH. The district also asserts that the evaluation team was led by a school psychologist, another highly qualified individual who was available to consult with the special education teacher regarding this assessment.

Investigative Findings

An audio recording of an Independent Evaluation Review Meeting on November 10, 2021 was provided by the parent. On that recording, at

approximately the one hour and fifty-two-minute mark, the parent asks the special education teacher whether she has received any training from "Pearson" – a company that produces a number of assessment instruments but not the WJ IV suite of assessments. The teacher tells the parent that she had not. The teacher also states that she did not receive specific training on the instrument through her university coursework.

Riverside Insights is the producer of the Woodcock Johnson IV suite of assessments which includes both the WJ IV ACH and the WJ IV COG. The company has established a "User Qualifications Guide" informed by the "Joint Standards for Educational and Psychological Testing [American Educational Research Association…American Psychological Association…National Council on Measurement in Education… [and] Standards for educational and psychological testing [in] Washington, D. C. (See riversideinsights.com or call 800.323.9540.)"

The guide outlines three applicable standards for these tests:

- Responsibility for test use should be assumed by or delegated only to those individuals who have the training, professional credentials, and expertise necessary to handle this responsibility. Any special qualifications for test administration or interpretation specified in the test manual should be met.
- Those responsible for educational testing programs should ensure that the individuals who administer and score the test(s) are proficient in the appropriate test administration procedures and scoring procedures and that they understand the importance of adhering to the directions provided by the test developer.
- Those responsible for educational testing programs should ensure that the individuals who interpret the test results to make decisions within the school context are qualified to do so or are assisted by and consult with persons who are so qualified.

The guide lists "qualification levels" associated with the two Woodcock-Johnson instruments identified in this complaint. For the WJ IV ACH, the company specifies the following "medium" level of required education/training for individuals who administer the test:

> Bachelor's degree or higher (e.g., BA, BS, MS, MA, etc.) in early childhood education or development, education, or psychology-related field, OR

> certification in OT/PT [occupational therapy/physical therapy or other medical field that is closely related to the intended use of the assessment AND supervised training in administration, scoring, and interpretation of standardized assessments.
>
> OR
>
> Formal supervised mental health, speech/language, medical, and/or educational training specific to assessing children, or infant and child development (school psychologist, speech/language pathologist, occupational therapist, educational diagnostician, nurse practitioner, head start specialist, etc.) AND supervised training in administration, scoring, and interpretation of standardized assessments.
>
> OR
>
> Licensure or certification in a field closely related to the intended use of the assessment OR full active membership in a professional organization such as ASHA [American Speech-Language-Hearing Association], AOTA [American Occupational Therapy Association], AERA [American Educational Research Association], ACA [American Counseling Association], AMA [American Medical Association], CEC [Council for Exceptional Children], AEA [American Evaluation Association], EAA [Educational Audiology Association], NAEYC [National Association for the Education of Young Children], NBCC [National Board for Certified Counselors) that requires training and experience in the relevant area of assessment.

In a document entitled "WJ Perspectives – Getting to Know the Woodcock-Johnson IV Tests of Achievement and Oral Language: An Introduction for Special Education Teachers" Riverside Insights states

> For many school settings, special education teachers are the primary administrators of the WJ IV ACH [and another Woodcock-Johnson assessment instrument].

Riverside Insights does not require that a user receive specific training on the WJ IV ACH from either the company or a college/university in order to have the "medium" level capabilities. Rather, the company requires a general level of training that would equip a user to administer the WJ IV ACH or another achievement test.

The district has outlined its own expectations for evaluations that are completed by district staff. As stated on page 12 of the district Special Education Handbook,

> All tests administered for evaluation purposes will be given by trained, licensed, and knowledgeable personnel. Test protocols will be followed in accordance with instructions by the publisher of the test.

The district has established internal practices to ensure that individuals who are responsible for the special education-related assessment of students have the training needed to conduct these evaluations. Training regarding the WJ ACH IV includes the modelling of test administration by a trained evaluator and supervised assessments by the trainee.

Additionally, the district has developed a structured mentoring program for new staff that includes sessions specifically designed to target assessment.

The WJ IV ACH was administered to the student by the special education teacher over a three-day period beginning on March 29, 2021 and continuing on April 5 and 21, 2021. At the time this assessment was conducted, the special education teacher held a Bachelor's degree in General Studies (BGS) with a concentration in Child Development. She had been licensed by the State of Kansas since August of 2019 in the area of High-Incidence Special Education for Pre-kindergarten through grade 12.

In the Fall of 2019, the special education teacher participated in the district-level training described above which focused specifically on the administration of the WJ IV ACH. That training included a review of overall expectations for the administration of the test, observations of the assessment being conducted by the trainer, and supervision/observation of the special education teacher by the trainer as the special education teacher administered the assessment. Additional district-level training in assessment was provided to the special education teacher in the Fall of 2019 and 2020 through the special education mentoring program.

In the Fall of 2020, the special education teacher completed university coursework on assessment as a part of a Master's in Special Education program. According to the online catalog for the university from which the special education teacher received her Master's degree in July of 2021, the course was

designed to prepare "students to plan, use and report on formal and informal assessments with individuals with exceptionalities. Students will gain knowledge and skills in analyzing data from standardized tests and curriculum-based measurements. Students will also acquire skills in using assessments to make decisions that will improve instructional and learning outcomes."

Summary and Conclusions

Special education regulations require that any standardized tests that are given to a child must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment.

In a User Qualifications Guide, Riverside Insights, the producer of the WJ IV ACH, defines what the company labels a "medium" level of education/training required for individuals who administer the test. In its listing of acceptable training for an examiner to be considered qualified, the company does not require that an examiner receive either company-developed training on the test or specific college/university course instruction focused on the administration of the WJ IV ACH. Rather, the company requires a level of training that would generally equip a user well to administer this test or any other achievement test like the WJ IV ACH

At the time she administered the WJ IV ACH to the student, the special education teacher met multiple criteria established by the test producer in order to be qualified to administer that test. The teacher held a Bachelor's degree with concentration in Child Development. She had completed Master's-level coursework in the area of assessment, was licensed by the State of Kansas as a special education teacher, and had completed district-level supervised training on the administration of the WJ IV ACH. Under these circumstances, a violation of special education statutes and regulations is not substantiated on this issue.

Issue Two: The district allowed an unqualified staff member to administer the Woodcock-Johnson Cognitive assessment but initially provided the parent with information which indicated that the test had been administered by another examiner.

Parent's Position

The parent asserts that the WJ IV COG was administered by the same examiner who had given the student the WJ IV ACH and contends that this individual was not qualified to administer the cognitive assessment. In support of her position, the parent points to a document entitled "Score Report" which only identifies one examiner. In the opinion of the parent, this document provides evidence of the district's attempt to conceal the true identity of the person who administered the WJ IV COG.

District's Position

The district asserts that the WJ IV COG was given by a school psychologist who was fully qualified to administer the test.

Applicable Statutes and Regulations

As noted above under Issue One, special education regulations require that any standardized tests that are given to a child must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. (34 C.F.R. 300.304(c)(1)(iv) and (v) and K.A.R. 91-40-9(a)(4)(B)).

Investigative Findings

When filing this complaint, the parent submitted a copy of the first page of a document entitled "Score Report." The parent asserts that this document provides proof that the special education teacher – not the school psychologist – administered the WJ IV COG assessment because the only examiner identified in the report is the special education teacher.

In support of its contention that the school psychologist administered the WJ IV COG to the student, the district provided an audio recording of a May 18, 2021 Eligibility Team meeting. At approximately the one hour and thirty-minute point of an audio recording of the meeting, the school psychologist, who was also facilitating the meeting, began to address the student's performance on the WJ IV COG. On the recording, the school psychologist makes several comments which indicated that she was the person who had administered the WJ IV COG to the student.

The parent is heard asking for the student's percentile scores on the subtests of the WJ IV COG. After a brief discussion, a member of the team leaves the

meeting to print a document that team members believed would include percentile scores. That document was the Score Report.

The Score Report is an internal, working document that was generated by a Riverside Insights computer scoring program. Raw data was entered into the scoring program, and scores were generated which the school psychologist subsequently included in the summative Eligibility/Identification Report given to the parents prior to the Eligibility Team meeting.

The district provided a copy of the Score Report. The document does not specify who administered the WJ IV COG, noting only that the WJ IV ACHA was administered by the special education teacher. The WJ IV ACH "A" is one of three parallel forms of the WJ IV ACH.

The cover sheet of the WJ IV COG protocol provided by the district shows that the test was administered over multiple sessions in April and May of 2021 by the school psychologist.

In addition to the general "applicable standards" for Woodcock-Johnson assessments outlined above under Issue One, Riverside Insights specifies in its User Qualifications Guide the following "high" level of education/training required for individuals who can administer that test:

> Doctorate or Masters (e.g., PhD, PsyD, EdD, etc) in a field closely related to the intended use of the assessment, which includes supervised training in administration, scoring, and interpretation of standardized clinical assessments.
>
> OR
>
> Licensure or certification to practice in your state in a field related to purchase (School Psychologist, Clinical Psychologist, etc.) AND supervised training in administration, scoring, and interpretation of standardized assessments.
>
> OR
>
> Licensure or certification in a field closely related to the intended use of the assessment OR full active membership in a professional organization (such as APA [American Psychological Association], NASP [National Association of School Psychologists], NAN [National Academy of Neuropsychology], INS [International Neuropsychological Society) that requires training and experience in the relevant area of assessment.

At the time the school psychologist administered the WJ IV COG, she held a Bachelor's degree (BS), an Educational Specialist's degree (EDS) and a Master's degree (MS). She was licensed by the State of Kansas to work in grades pre-kindergarten through 12 as a School Psychologist. As a part of her training programs, the school psychologist completed coursework in the administration, scoring, and interpretation of standardized intelligence and achievement testing.

Summary and Conclusions

The investigator found no support for the parent's contention that the district attempted to conceal the identity of the individual who administered the WJ IV COG to the student. Evidence shows that the test was not given by the special education teacher. The evaluation was conducted by a licensed school psychologist whose advanced degrees and training met the "high" standards established by the producer of the test to be considered qualified to administer the test. A violation of special education statutes and regulations is not substantiated on this issue.

Issue Three: The student was denied a free appropriate public education (FAPE) on the basis of data obtained through assessments completed by the unqualified staff member identified above in both Issue One and Issue Two.

Parent's Position

The parent asserts that the district's refusal to determine that the student was in need of special education services was based upon assessments administered by an unqualified evaluator. The parent contends that by disregarding the parent's concern regarding the qualifications of the special education teacher and the use of WJ IV ACH scores obtained through evaluation by an unqualified examiner, the district failed to protect the parent's rights and the rights of the student to a free appropriate public education (FAPE).

District's Position

It is the position of the district that the special education teacher and the school psychologist met the user qualification standards established by the producer of the WJ IV ACH and WJ IV COG for the test each administered. The district

further asserts that these two assessments represent only a portion of the information used in May of 2021 to make decisions regarding the student's need for special education services.

Applicable Statutes and Regulations

As noted above under Issue One, special education regulations require that any standardized tests that are given to a child must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. (34 C.F.R. 300.304(c)(1)(iv) and (v) and K.A.R. 91-40-9(a)(4)(B)).

Investigative Findings

Investigation of Issues One and Two above determined that the individuals who administered the WJ IV ACH and WJ IV COG were qualified.

According to a Prior Written Notice form dated August 23, 2021, the determination that the student was not in need of special education (Prong 2), was based on a number of factors. The report states

> "Based on MAP testing and WJ testing, [the student's] academic skills are not significantly below his peers. There were some below average scores on the WJ but none of his scores were close to being significantly below average or not 1.5 standard deviations below the mean. [The student's] MAP scores are in the average range. Based on classroom data, [the student] is reading at a Level O which is an end of 3rd grade level. Providing modifications and accommodations through his 504 Plan are allowing [the student] to make progress in the general curriculum. Since returning from remote learning, his educational growth has been at an appropriate level. He is making the appropriate progress with Title reading interventions that is expected."

Summary and Conclusions

The investigation of Issues One and Two above found that the individuals who administered the WJ IV ACH and the WJ IV COG were qualified. Additionally, the district's determination that the student was not in need of special education services was based on factors beyond the student's scores on Woodcock-

Johnson testing. A violation of special education statutes and regulations is not substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has *not* identified any areas of noncompliance with special education statutes and regulations. Therefore, no corrective actions are required.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.
For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.



Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.
Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the

complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260
ON DECEMBER 20, 2021

DATE OF REPORT: JANUARY 7, 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with Dawn Gresham, Director of Special Services for USD #260, on December 21, 2021 and January 2, 2022. The investigator spoke by telephone with the student's father on December 28, 2021.

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

- IEP for this student dated October 26, 2021
- IEP Amendment dated December 10, 2021
- Meeting Summary dated December 10, 2021
- Email exchanges dated December 16 and 17, 2021 between the building principal, assistant principal, language arts teacher, director of special education, assistant director of special services, school psychologist, and assistant superintendent
- Email exchange dated December 17, 2021 between the principal and the school psychologist
- Online calendar for the district
- Notice of Meeting form dated December 17, 2021

Background Information

This investigation involves a fifteen-year-old girl who is enrolled in the tenth grade in her neighborhood high school. The student has received special education services in the district since fourth grade. She has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) combined type and Anxiety.

Issue

In their written complaint, the parents identified the following issue:

Issue One: The parents' request for modifications to the student's IEP was denied by the district.

Applicable Statutes and Regulations

The IEP for an exceptional student is developed by a team that includes parents, school professionals, the student (when appropriate), and – if addressing transition needs) personnel from other agencies as appropriate. The school is responsible for determining when it is necessary to conduct an IEP meeting, but the parents of a child with an exceptionality have the right to request an IEP meeting at any time (K.S.A. 72-3429(f)).

The State of Kansas has established 15 school days as a "reasonable time" to respond to a parent's proposal regarding the initiation, or change of, identification, evaluation, placement, or the provision of FAPE to a child with an exceptionality when statutes or regulations do not fix a specific timeline for action. The 15 school-day timeline would apply in the case of a parental request for an IEP team meeting since Kansas statutes and regulations do not fix any other specific timeline for district action. (See KSDE Memo, "Reasonable Time" to respond to parent request for evaluation, January 8, 2002, at https://www.ksde.org/Default.aspx?tabid=614 .)

IEP team meetings are to be scheduled at a mutually agreed upon time and place (K.A.R. 91-40-17(a)(1)). The school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings. The notice must be provided in writing at least 10 days prior to the meeting (K.A.R. 91-40-17(a)(2)). A parent may provide consent for the team to conduct an IEP Team meeting with less than 10-day notice if both parties have agreed to hold the meeting within the 10-day window.

One of the procedural safeguards afforded to parents is the requirement for prior written notice of certain proposed education actions. Prior written notice is required when the district proposes to initiate or change the educational placement of a child or the provision of special education and related services (FAPE) to that child. Prior Written Notice must also be provided when a district refuses a parent's request to make a change to the provision of a FAPE to the child (K.S.A. 72-3430(b)(2) and 34 C.F.R. 300.503(a)(2)).

Parent's Position

The parents assert that, because the district did not convene an IEP meeting on a date designated by the parent, the district has denied their request for the addition of two accommodations to the student's October 26, 2021 IEP.

The parents contend that while the student's current teachers allow her to use headphones as a general education accommodation, future teachers may not permit the use of headphones unless the accommodation is explicitly included in the student's IEP.

The student's father states that while the student's October 2021 IEP calls for a reduction of 25% in math assignments and assessments, he believes that her overall anxiety level would be significantly reduced if that reduction was extended in all of her classes.

District's Position

It is the position of the district that the parents' claim that their request for changes to the student's IEP has been denied by the district is premature. The district asserts that an IEP Team meeting to further discuss this request was proposed by the district for January 5, 2022 – three school days after the request for a meeting by the student's father – but the student's father has stated that he will not participate in the meeting.

Investigative Findings

A meeting was held on Friday, December 10, 2021. Neither the district nor the student's father describe this meeting as an IEP team meeting. According to both parties, the purpose of the meeting was to facilitate a conversation between the parent, special education staff, and the student's second semester teachers in order to provide those teachers with information about the student and her IEP. Additionally,

this group was to discuss the removal of a social skills support class from the student's schedule.

According to a summary of the meeting written by the student's case manager, the following people were in attendance:

- the student's father
- the student's case manager
- the counselor
- an assistant principal
- the assistant director of special services
- the student's aerospace science instructor
- the student's history teacher
- the student's chemistry teacher
- the student's PE teacher
- the student's language arts teacher
- the student's journalism teacher

The summary shows that the student's father was introduced to the student's second semester teachers. The teachers were reminded that they had been sent a copy of the student's IEP and were asked to review the accommodations and special considerations included in that document including the student's "Sub Plan."

The summary indicates that the group discussed the removal of a Social Skills class from the student's IEP. The group also addressed the parent's request for two accommodations (listening to music during independent work time and a 25% reduction in coursework load across all courses). They reviewed written comments provided by the student's mother regarding paraeducator support for the student as well as modifications associated with the student's reading level.

Following the discussion, the student's father told the group that he would be following up with a member of the Special Education and Title Services (SETS) division of the Kansas State Department of Education (KSDE) to get his opinion regarding the addition of accommodations. According to the summary, the student's father told the group that, after he had consulted with SETS/KSDE, he would contact the district so that accommodations could be discussed further and a decision regarding how to move forward could be made.

The student's father told the investigator that he spoke with the assistant director of special services as the two left the meeting on December 10, 2021, telling the assistant director that it should be easy to add the two accommodations he had requested to the student's IEP.

At 2:44 PM on Thursday, December 16, 2021, the building principal sent an email to the director and assistant director of special services, the school psychologist, the student's language arts teacher, and the assistant principal stating

> [The student's father] has stated he is filing a formal complaint if he does not have an IEP by tomorrow morning….I do not have an IEP to share with him and I know there has been much conversation and frustration this week with this matter. I need to know who and when someone can make contact and assist with or determine what he needs.

At 2:45 PM, the school psychologist sent the principal a copy of the student's IEP.

At 2:48 PM, the assistant principal sent an email to the building principal, school psychologist, director of special education, assistant director of special services, and the student's language arts teacher stating

> "Just spoke to [the student's father] again. He wants an IEP meeting tomorrow. I told him I would let you all know about it…"

The principal responded, stating that he would be unable to attend a meeting the following day. The director of special services also responded stating

> "While a parent can request reasonable accommodations and an IEP meeting, the IEP Team is…who can discuss and the LEA (local education agency) makes the final offer of FAPE (free appropriate public education)…I will offer him an IEP meeting upon return in January."

At 3:18 PM, the student's special education teacher sent an email to the principal and assistant principal, school psychologist, and director of special services to tell them that the student's father had emailed her "about having an IEP meeting tomorrow."

The assistant director of special services called the parent at around 4:30 PM on December 16, 2021 and told the parent that the district had ten business days to set up the meeting. According to an email sent to the principal, assistant principal, school

psychologist, director of special education, case manager, and assistant superintendent, the parent stated that he would be "getting the State involved."

Prior notice of a January 5, 2022 IEP meeting was provided to the parents by the school psychologist via HelloSign, the district on-line system. Notice was also sent via certified letter on December 17, 2021.

According to the online calendar, the last day of school for the district before winter break was December 17, 2021. Students did not return to classes until January 4, 2022.

The director of special education told the investigator that the student's father called her on December 22, 2021 to tell her he would not be participating in the proposed January 5, 2022 meeting. On December 28, 2021, the student's father confirmed to the investigator that he had responded to the district's notice indicating that he would not participate in the team meeting, opting instead to wait for the finding of this complaint.

In a phone call with the investigator on January 2, 2022, the director of special services stated that the district is open to discussing the parents' request for changes to the student's IEP and hopeful that the parties can come to agreement on a time for an IEP meeting.

While, at the time this report was completed, the parties had not agreed upon a time for an IEP team meeting for the purpose of considering the parents' request for changes to the student's October 26, 2021 IEP, no evidence has been provided to show that the district has refused to schedule an IEP meeting within a reasonable time to consider the parent's requests.

Summary and Conclusions

On Thursday, December 16, 2021, the student's father contacted the building principal, the assistant principal, and the student's case manager stating that he wanted to have an IEP team meeting on the following day, Friday, December 17, 2021. The assistant director of special services contacted the student's father to offer to set a meeting during the first week of January 2022 when students returned to school after winter break which began December 18, 2021. The parent declined to agree to any date for the meeting other than December 17, 2021.

On December 17, 2021, a 10-day prior notice was sent to the parents for an IEP team meeting on January 5, 2022 – the second school day after the conclusion of winter break and three school days after the parent made his request for an IEP team meeting. The student's father has told the director of special services and this investigator that he will not participate in any IEP meeting until the investigation of this complaint had been completed.

The district's failure to schedule an IEP team meeting within 24 hours of the parent's request is not a violation of special education statutes and regulations. The district responded to the parent the same day his request was made and offered a meeting within 3 school days of that request. The district's proposal for an IEP team meeting on a date other than the one mandated by the parent does not constitute a failure to respond within a reasonable time to the parent's request for an IEP meeting and certainly not a refusal of the parents' requested changes to the student's IEP. A violation of special education statutes and regulations is not substantiated.

Corrective Action

Information gathered in the course of this investigation has ***not*** identified any areas of noncompliance with special education statutes and regulations. Therefore, no corrective actions are required.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin, Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing

a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #437
ON DECEMBER 7, 2021

DATE OF REPORT JANUARY 13, 2022

This report is in response to a complaint filed with our office on behalf of _____ ____ by ____ and _____ ____. In the remainder of the report, _____ ____ will be referred to as "the student" and ____ and _____ ____ will be referred to as "the foster parents" or "the complainants."

While the student lives with the foster parents, it is noted that _____ and _____ ____ are the biological parents of the student and retain all legal rights. Thus, they are considered the educational decision makers for the student for the purposes of the IDEA. A signed written consent to share personally identifiable information with the foster parents for the purposes of this investigation was provided by Mr. ____ on January 4, 2022. In the remainder of the report, _____ and _____ ____ will be referred to as the "biological parents" or the "educational decision makers."

The complaint is against USD #437 (Auburn Washburn Public Schools). In the remainder of the report, USD #437will be referred to as the "school," the "district" or the "local education agency (LEA)."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on December 7, 2021; however, the district's holiday break began on December 20, 2021 and school did not resume until January 3, 2022. For this reason, the 30-day timeline to investigate this complaint was extended by seven days and ends on January 13, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the foster parents by telephone on December 8, 2021 and January 6, 2022.

USD #437 made the following school staff available for a telephone interview on January 5, 2022:

- Kevin Raley, Director of Special Education
- Jamie Callaghan, Executive Director of Learning Services
- Melinda Patterson, Auburn Elementary School Principal
- Michelle South, Special Education Teacher
- Rachel Grieves, Speech/Language Pathologist

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) dated October 15, 2020
- Prior Written Notice (PWN) dated February 3, 2021 regarding comparable services upon in-state transfer into USD #437
- Behavior Intervention Plan dated April 27, 2021
- IEP dated April 30, 2021
- Screenshot of text message between school staff and foster mother dated May 25, 2021 requesting the student be picked up from school due to behavior issues
- Screenshot of text message between school staff and foster mother dated June 24, 2021 requesting the student be picked up from school due to behavior issues
- Behavior Data Sheets for August 12 and 13, 2021
- Behavior Data Sheets for August 16 – 20, 2021
- Student Transportation Log dated between August 17 and December 17, 2021
- PWN dated August 17, 2021 regarding the student's transportation plan
- Speech/Language Therapy Log dated between August 23 and December 15, 2021
- Email dated September 9, 2021 at 3:03 p.m. from Ms. Patterson to the foster mother regarding extending the quarantine due to staff shortage

- Email dated September 10, 2021 at 8:08 a.m. from the foster mother to Ms. Patterson indicating that the student would return to school on September 13, 2021
- Email dated September 10, 2021 at 11:58 a.m. from the foster mother to Scott McWilliams, Superintendent of USD #437 regarding concerns with services during the quarantine
- Email dated September 10, 2021 at 12:44 p.m. from Ms. Patterson to the foster mother requesting a phone conference to discuss concerns
- Screenshot of text messages between the foster mother and Ms. South on September 14, 2021related to medical diagnosis of loss of bowel control
- Behavior Data Sheets for September 28 – October 1, 2021
- Emergency Safety Intervention (ESI) Report and Parent Notification dated October 6, 2021
- Incident Report dated November 16, 2021 in Campus Portal showing a one day suspension from the bus
- Email dated November 22, 2021 at 10:32 a.m. from Sarah Feldhausen, Aetna Insurance Case Manager, to Ms. South and copied to Erin Bennett, Dean of Behavioral Services regarding the student's continued need for a psychiatric residential treatment facility (PRTF)
- Email dated November 22, 2021 at 4:36 p.m. from Ms. Bennett to Ms. Feldhausen regarding the need for a PRTF and videotaping
- Email dated November 22, 2021 at 6:53 p.m. from the foster mother to Dr. Raley questioning the PRTF recommendation
- Email dated November 29, 2021 at 11:38 a.m. from Dr. Raley to the foster mother responding to her question
- Formal Complaint Request Form completed by the foster parents dated December 6, 2021
- Email dated December 3, 2021 at 10:12 a.m. from Ms. Patterson to the foster mother with notification of close contact with COVID-19 and describing procedures for return to school
- Email dated December 3, 2021 at 10:48 from the foster mother to Ms. Patterson granting consent for the "Test to Learn" program
- Email dated December 3, 2021 at 11:15 from Ms. Patterson to the foster mother regarding concerns with the "Test to Learn" program for the student

- Email dated December 8, 2021 at 2:32 p.m. from Renae Silvers, Special Services Department Secretary, to the foster parent regarding mileage reimbursement
- Behavior Data Sheets for November 30 and December 1, 2021
- Behavior Data Sheets for the week of December 6 – 10, 2021
- ABC Data Sheets for December 15 and 16, 2021
- Purchase Order dated December 15, 2021 for mileage reimbursement to the foster parents
- USD #437 Response to the Allegations dated December 17, 2021
- Email dated January 11, 2022 at 12:05 p.m. written by Dr. Raley to the Complaint Investigator
- IEP Goal Progress Reports for the 2021-22 school year
- Student Activity Log showing bus transportation provided during the 2020-21 school year
- Student Activity Log showing bus transportation provided during the 2021-22 school year
- Three photos of the student's work space showing charts with picture icons
- Three videos of the student working in the special education classroom (elapsed time of 25 seconds; 41 seconds; and 27 seconds)
- USD #437 Elementary School Handbook for the 2021-22 School Year
- USD #437 District Calendar for the 2021-22 School Year
- 2021 Spring and Summer Update: Compliance with the Individuals with Disabilities Education Act and the Kansas Special Education for Exceptional Children Act during the COVID-19 Pandemic
- Kansas Psychiatric Residential Treatment Facility (PRTF) Medical Necessity Criteria

Background Information

This investigation involves a 12-year-old male student who is eligible for special education and related services under the exceptionality category of autism. The student lives with foster parents through a private placement arrangement with the biological parents. He transferred into USD 437 on January 27, 2021 and is currently in the fifth grade at Auburn Elementary School. The student has received special education and related services since his enrollment into USD #437.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised four issues that were investigated.

> ISSUE ONE: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required specialized instruction when the student was quarantined during the 2021-22 school year.

Positions of the Parties

The foster parents report that the student was quarantined on four separate occasions during the 2021-22 school year for a total of nine days on September 7, 8, 9, and 10, 2021; September 14 and 15, 2021; November 9 and 10, 2021 and finally on December 3, 2021. The district did not offer or provide the student with any special education or related services during those periods according to the foster parents. They believe the district is quarantining the student because the school staff at Auburn Elementary School believe the student needs a more restrictive setting and do not want to have the student in their school building. The foster parents also allege that the school district does not have the authority to quarantine a student.

USD #437 acknowledged that the student was quarantined on two separate occasions during the 2021-22 school year for a total of five days. The first quarantine period was on September 7, 8, 9, and 10, 2021. School staff report distance learning options including Zoom and home packets were discussed and offered as a means of providing special education services during this period in a phone call made to the foster mother by Michele South, Special Education Teacher, and Melinda Patterson, Elementary Principal. The staff reported that the foster parents declined all services for this time period.

The staff noted that the quarantine period was extended because of a staff shortage in the student's classroom until September 14, 2021; however, because the foster parents were the only family not in agreement with the extension, USD 437 made arrangements to provide services to the student on September 13 and 14, 2021. Unfortunately, the student was sent home sick on September 14, 2021 due to illness. The student returned to school in 24 hours following the district's illness policy on September 15, 2021.

The district noted the student was also sent home for illness on November 9, 2021. Again, per the district's illness policy, the student was allowed to return to school in 24 hours on November 10, 2021.

USD #437 indicated the student was again quarantined on December 3, 2021 due to being a close contact with a COVID-19 case on the school bus. Per school district policy, the student was allowed to return to school to receive his special education and related services through the "Test to Learn" program for the remainder of the quarantine period on December 6, 7, 8, 9, 10, and 13, 2021.

The district believes they are following the state and county public health guidelines in implementing their COVID-19 and illness district policies.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the foster parents and LEA staff in USD #437.

The current IEP for the student was developed on April 30, 2021. Both the foster mother and biological father participated in the development of the IEP. This IEP includes five goals and objectives and requires 1905 minutes per week of special education services in the special education setting; 150 minutes of special education services in the general education setting; 45 minutes per week of speech/language therapy; and 15 minutes per month of occupational therapy consultation with the

student's teachers and staff. The IEP also requires access to attendant care by a non-instructional paraeducator and transportation as a related service.

Both the foster parents and USD #437 agree the student was quarantined on September 7, 8, 9, and 10, 2021. While the school staff report that services during the quarantine period were offered in a phone call, the foster parents do not recall that conversation. No documentation such as a phone log, email, text, letter, etc. was provided by USD #437 to show that special education and related services were discussed with or offered and refused by the foster parents during this timeframe. There is also no documentation to show the biological parents were involved in any discussions regarding services to be provided during quarantine.

Ms. Patterson sent an email to the foster parents on September 9, 2021 at 3:03 p.m. stating,

> I am reaching out to let you know that we will have to extend your student's quarantine by one more day due to staffing issues. If students were to return on September 14, we would have to staff our room with 6 substitutes. Considering that we are just coming off a quarantine, we didn't think this was the best option for anyone for many reasons. We know our students don't do well with change and we just don't have that many subs who are trained on our programs. In addition, we don't want to bring in 6 people who aren't normally in the school that could potentially trigger another quarantine. If we can avoid this by delaying our start date by one day, we would like to do that. Please respond to this email so we know that you have received this information.

The foster parents were not in agreement with the extension to the quarantine and the foster mother emailed Scott McWilliams, Superintendent of USD #437, on September 10, 2021 regarding concerns with services during the quarantine. The foster mother wrote,

> Another issue to address in the Covid quarantine is how the student will be educated during this time and in the future if there is another mandatory quarantine . . . The student has been at home all week, due to the school quarantine, with no IEP education offered or provided by the

> school. He is Covid free with no symptoms. We have the test results being negative and had let the nurse know on Sunday of last week that we had planned to send him on Monday of this coming week [September 13, 2021] when his Covid results would come back negative. We were notified yesterday that the school is extending his quarantine to Wednesday [September 15, 2021], which would be 6 days without an education provided, due to lack of teachers . . . Will the student be able to attend school on Monday and have his IEP services implemented?

In response to this email, the foster mother stated,

> I also had a lengthy phone call with Melinda [Patterson, Elementary Principal] after this email and she told me if I wanted IEP services/school work for the student during the quarantine, I should have asked for it. During this phone call too, she let me know that she did not appreciate me emailing her boss, the superintendent Mr. McWilliams about the extended quarantine and said he approved of the quarantine extension due to not having enough staff for the autism classroom. She also said she was calling me back instead of the superintendent in reference to the email.

Both the foster parents and USD #437 agree that the student attended school on Monday, September 13, 2021 and received the required special education services on that date.

On September 14, 2021, Ms. South sent a text to the foster mother at 12:31 p.m. letting her know the student had diarrhea and needed to be picked up from school. The foster mother texted back indicating that the student "has loss of bowel control as a diagnosis . . . this is from his chronic constipation . . . and he's on stool softeners." The foster mother reported the school staff refused to let the student stay in school even after she texted them a screen shot of the diagnosis from the student's discharge summary on August 18, 2021.

USD #437 reported that the foster parent had not provided school staff with a copy of the August 18, 2021 discharge summary showing the diagnosis nor informed school

staff that the student had been given a stool softener that day. Kevin Raley, Director of Special Education, stated,

> Therefore, out of an abundance of caution - given that diarrhea is a possible symptom of COVID-19 and that the student had just returned from quarantine - the nurse sent the student home on the afternoon of the 14th. The nurse told the foster parents that if the student was evaluated by a physician and received an alternate diagnosis, that would be acceptable, or the student could get a rapid COVID test and return with a negative test. The student tested negative for COVID and was allowed to return to school after 24 hours on September 15th, which is consistent with district policy after vomiting or diarrhea.

The foster parents acknowledge that the student returned to school on September 15, 2021approximately 24 hours after being sent home with diarrhea.

Both of the parties agree that On November 9th, the student developed a cough and runny nose. Both of these symptoms are associated with COVID-19 and the student was sent home to be evaluated by his primary care physician. After testing negative for COVID-19, he returned to school the following afternoon after 24 hours, which is consistent with district policy.

On December 3, 2021, Ms. Patterson called and left messages for the foster parents and then emailed the foster mother at 10:12 a.m. to inform them that the student had been identified as a close contact to another student on his school bus who had tested positive for COVID-19. In the email, Ms. Patterson stated,

> He will need to quarantine for 10 days. We have his 10th day as December 12 and he can come back on the 13th. He can take a PCR test on Day 6 (Wed. Dec. 8) and if it is negative, can come back on day 8 (Fri, Dec. 10)

USD #437 reported that the foster mother then contacted Jaimie Callaghan, Executive Director of Learning Services. During this conversation, the district's "Test to Learn" program was offered which would require the foster parents transport the student to school each day to the Auburn Elementary School for rapid testing and, if negative, be allowed to attend school and ride the bus home after school. Because transportation is a related service on the student's IEP, USD #437 would provide the foster parents

with reimbursement for the days the student was transported to school because of the quarantine.

The foster mother completed the consent form for the student to participate in the "Test to Learn" program and emailed the form to Ms. Patterson at 10:48 a.m. on December 3, 2021.

Ms. Patterson emailed the foster mother on December 3, 20201 at 11:15 a.m. stating,

> You are correct, our district does have a test to learn option. The reason I didn't offer this initially was that in order to do this, the student has to wear their mask appropriately all day. In addition, I know the student has been tested previously, but I didn't know if being tested every day would be too traumatic for him.

Both parties agree that the student was sent home on December 3, 2021 and did not receive all of his special education and related services on that date due to being quarantined. Both parties also agree that the student participated in the "Test to Learn" program and attended school on December 6, 7, 8, 9, 10, and 13, 2021. Both parties agree that USD #437 provided the foster parents with a check for transportation costs on those dates.

The student's progress towards his IEP goals and objectives as shown on the IEP Goal Progress Reports for the 2021-22 school year are as follows:

Goals / Measurable Objectives	Making Adequate Progress to Meet Annual Goal	Making Inadequate Progress to Meet Annual Goal
Goal 1		First Quarter / Second Quarter
Measurable Objectives		First Quarter / Second Quarter
Goal 2		First Quarter / Second Quarter
Measureable Objectives	Second Quarter	First Quarter
Goal 3		First Quarter / Second Quarter
Measureable Objectives		First Quarter / Second Quarter
Goal 4		First Quarter / Second Quarter
Measureable Objectives		First Quarter / Second Quarter
Goal 5	First Quarter / Second Quarter	
Measureable Objectives	First Quarter / Second Quarter	

In the district's response to the allegations, Kevin Raley, Director of Special Education, stated,

> COVID-19 continues to present school districts and parents alike with many challenges pertaining to quarantine guidelines. We are obligated to follow the state and local regulations related to COVID-19, and unfortunately this can result in a great deal of inconvenience for parents and missed schooling for students. That said, the school and district has followed these guidelines to the letter (though not beyond), and we reject any statement or implication from the foster parents that the school has misconstrued or misused COVID-19 guidelines to send the student home unnecessarily as false.

Applicable Regulations and Conclusions

The IDEA does not address public health issues and therefore no investigation or conclusions were made on the allegations related to the district having the authority to quarantine a student due to COVID-19 symptoms or to send a student home due to illness. Concerns related to these issues should be addressed to USD #437 Board of Education who create the school district policy.

However, federal regulations implementing the IDEA at 34 C.F.R. 300.301 require a free appropriate education (FAPE) be provided to students with disabilities who are ages three through 21. Federal regulations implementing the IDEA at 34 C.F.R. 300.17(d) define FAPE as providing the special education and related services in conformity with the IEP.

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

Federal regulations at 34 C.F.R. 300.322(a) require school districts to provide parents with the opportunity to participate in the development of the IEP. This would include

the development of the special education and related services that were to be provided during periods of quarantine.

In this case, interviews and documentation show the student was not in attendance at school to receive his special education and related services on September 7, 8, 9, 10, 14, and 15, 2021; on November 9 and 10, 2021; and again on December 3, 2021 due to being excluded from school due to quarantine or illness. The student's current IEP does not include any plan describing how services are to be provided to the student in case of quarantine.

While the district reported special education services were offered during the first quarantine period in September, there is no documentation to support this. The foster mother reported no services were offered and indicated she were told by Ms. Patterson that, "If I wanted IEP services/school work for the student during the quarantine, I should have asked for it." Further, the December 3, 2021 email notifying the foster parents of the second 10 day quarantine period did not include any mention of the plan or procedure to be followed in order to provide the student with his special education service and related services during this timeframe.

There is also no documentation to show the biological parents of the student were ever included in any discussions regarding special education and related services to be provided while the student was quarantined.

The IDEA does not provide guidance for a change of placement based upon student absence due to illness or quarantine. However, In Letter to Clarke (48 IDELR 77, 2007) from the Office of Special Education Programs (OSEP) does provide guidance. OSEP was asked how schools should handle absences, either absences of school staff members or absences of students. OSEP answered with the following:

> We encourage public agencies to consider the impact of a provider's absence or a child's absence on the child's progress and performance and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP. Whether an interruption in services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis. [Emphasis added.]

Federal regulations at 34 C.F.R. 300.324(b)(1)(i) and (ii)(A) require school districts to review a student's IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected progress toward those annual goals.

In this case, the student's IEP Goal Progress Reports for both the first quarter and second quarter of the 2021-22 school year show the student is making inadequate progress towards the majority of his IEP goals. It is unclear whether this lack of progress is the result of absences from school or the result of the failure to provide the student with special education services while the student was quarantined. However, it is clear the student is not make adequate progress in order to achieve his annual IEP goals and that USD #437 did not reconvene the student's IEP team to review the IEP, consider the impact of the student's absences combined with lack of special education and related services during the first semester, and then to revise the student's IEP as appropriate to address this lack of progress.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide the student's parents with the opportunity to participate in the development of the IEP. In addition, a violation of special education statutes and regulations is substantiated for failing to review and revise the IEP, as appropriate, due to lack of adequate progress towards the student's IEP goals during the 2021-22 school year.

> ISSUE TWO: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not consistently providing transportation as a related service during the 2021-22 school year.

Positions of the Parties

The foster parents report that USD #437 has required them to provide transportation for the student school multiple times during the past 12 months. During the second semester of the 2020-21 school year, they were called on at least five occasions to pick the student up from school due to his behavior. The foster parents indicated that an IEP meeting was held in September 2021 to develop a plan to address the student's

behavior at school. During the 2021-22 school year, USD #437 sent the student home on November 16, 2021 because he was reportedly "unsafe" to ride the bus home.

The foster parents also reported that they were required to transport the student to school on December 6, 7, 8, 9, 10, and 13, 2021 in order for the student to be tested for COVID-19 each morning in order to attend school through the "Test to Learn" program. The foster parents acknowledge that the district did send them a check to reimburse them for the mileage to transport the student on these dates.

USD #437 disputes the allegation that they failed to transportation as a related service to the student during the past 12 months.

Kevin Raley, Director of Special Education, wrote the district's response to the allegations dated December 17, 2021. He stated,

> As transportation had been a challenging transition for the student last year, the team met on September 3rd, 2021 to conduct observations and modify the student's transition plan for the 2021-2022 school year. The new plan involved modifications to his late afternoon schedule, new visual supports, and transition objects to facilitate a smoother transition to dismissal. This plan has been very successful with the 11/16 date representing the only time during the current year that parents were called to pick the student up. The student was assigned one day of out-of-school suspension on the 16th as he was sent home without having received his special transportation services for that day. The foster mother and Dr. Raley spoke about this incident over the phone and Dr. Raley assured the foster mother that the Auburn team's goal and priority is safely transporting the student home, and that it is the school's last resort to call parents to pick him up. After this event, the school team again evaluated the student's bus-transition plan and determined that this was truly a one-off event, and not indicative that the transition plan was not working effectively.

USD #437 acknowledged transportation was not provided when the student was quarantined on December 3, 2021 due to being in close contact with a person infected with COVID-19. Through the district's "Test to Learn" option, the student was allowed to test each morning and, if negative for COVID-19, allowed to attend school that day

with transportation being provided at the end of the school day. The student tested negative on December 6, 7, 8, 9, 10, and 13, 2021 and was provided transportation as a related service home each of those days. USD #437 acknowledged that the district did not provide transportation to school on these dates; however, the parent was offered and provided compensation for providing the transportation to school on those dates thus meeting the district's obligation to provide transportation as a related service at no cost to the parents.

However, USD #437 acknowledged that transportation as a related service was not provided during the second semester of the 2020-21 school year on February 8, April 6, May 25, June 14 and June 24, 2021. On each of these dates, the student displayed behavior that made it unsafe for him to be transported on the school bus and the foster parents were called to provide transportation home at the end of the school day.

Dr. Raley noted that the foster parents were not reimbursed for providing the transportation on these five days and indicated the district had taken steps to reimburse the foster parents for providing the transportation as a related service on these five days during the 2020-21 school year.

Dr. Raley also noted that training had been provided to principals in the district at the beginning of the school year to ensure that school staff were aware that students who receive special transportation and are not allowed to ride the bus for any reason are being denied a special education service and this denial would be considered as an OSS and count towards the 10-day disciplinary change of placement.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #437.

The findings of Issue One are incorporated herein by reference.

The student transferred into USD #437 on January 27, 2021 with a current IEP dated October 15, 2021 from another school district in the state of Kansas. This IEP required transportation be provided as a related service.

Both parties agree that transportation as a related service was not provided on five occasions during the second semester of the 2020-21 school year. On February 8, April 6, May 25, June 14 and June 24, 2021, the student displayed behavior that made it unsafe for him to be transported on the school bus and the foster parents were called to provide transportation home at the end of the school day.

Both parties agree that the foster parents were called on November 16, 2021 to provide transportation home at the end of the school day due to concerns with the student's behavior. This date is shown as a day of OSS in the student's disciplinary record in the Campus Portal.

Both parties agree that transportation as a related service was not provided on December 6, 7, 8, 9, 10, and 13, 2021 during the 2021-22 school year. On these dates, the foster parents provided transportation to Auburn Elementary School in order for the student to participate in the "Test to Learn" program. Both parties acknowledge that the district provided reimbursement to the foster parents for transporting the student on these dates.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(4) require school districts to develop an IEP that describes the special education and related services that will enable the student to make progress towards their annual goals in order to receive a free appropriate public education (FAPE). Federal regulations implementing the IDEA at 34 C.F.R. 300.34(a) and (c)(16) require related services to include any necessary transportation to and from school.

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP. These services must be provided at public expense [34C.F.R.300.17(d).

In this case, interviews and documentation show the student was not provided with transportation as a related service during the past 12 months on the following dates: February 8, April 6, May 25, June 14, June 24, November 16, December 6, December 7, December 8, December 9, December 10, and 13, 2021. However, interviews and documentation also found that the foster parents were reimbursed by USD #437 for providing transportation as a related service on December 6, December 7, December 8, December 9, December 10, and 13, 2021. So, for these dates, although transportation was provided by the foster parents, it was provided at public expense.

USD #437 acknowledge that the foster parents provided transportation as a related service on February 8, April 6, May 25, June 14, June 24, 2021. The foster parents were not reimbursed for the cost of this transportation, although reimbursement is currently being pursued to pay the foster parents for providing the transportation as a related service on these dates.

There is a similar analysis when transportation is a related service in a child's IEP, and it is not provided for disciplinary reasons. That happened on November 16, 2021 when the foster parents were called to transport the student home due to behavior that made it unsafe for him to ride the school bus. The district appropriately treated this day as a day of out-of-school suspension (OSS) because the required special education service of transportation was not provided to the student for disciplinary reasons.

The Letter to Sarzynski (59 IDELR 141, 2012) from the Office of Special Education Programs (OSEP) provides additional guidance for disciplinary action related to transportation as a related service. OSEP was asked if a school district could suspend a student who has transportation as a related service included in the IEP from the bus for behavioral issues and not provide some other form of transportation to and from school. OSEP answered by stating that when such a student is not provided with transportation as a related services due to disciplinary action, the school district is still responsible for providing that service at no cost to the parent even if the parent voluntarily provides the transportation to enable the student to attend school.

In this case, documentation and interviews showed the foster parents were called to transport the student home on only one occasion during the 2021-22 school year on

November 16, 2021 because of the student's behavioral concerns made it unsafe for him to ride the school bus. The district did not provide the required transportation as a related service and counted this day as one day of OSS.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the student's IEP, specifically by not providing transportation as a related service during the past 12 months on the following dates: February 8, April 6, May 25, June 14, June 24, and November 16, 2021. However, it is noted that USD #437 has already begun taking steps to correct this noncompliance.

> ISSUE THREE: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not following the Behavior Intervention Plan for using the augmentative and alternative communication (AAC) device or picture icons on his desk during the 2021-22 school year.

Positions of the Parties

The foster parents believe school staff in USD #437 deliberately denied the student access to his AAC device and picture icons when they videotaped the student as documentation to support their belief that the student requires a more restrictive setting outside of Auburn Elementary School. The foster parents reported school staff have indicated on multiple occasions that they believe the student needs to be placed in a psychiatric residential treatment facility (PRTF). The foster parents indicated that the student regularly uses his iPad to communicate his wants and needs.

USD #437 acknowledged that the student's behavior was challenging when he initially enrolled in January, 2021; however, the student has made marked growth in this area during the 2021-22 school year as evidenced by only one instance of seclusion occurring on October 6, 2021 for approximately five minutes as well as only one instance of the student not being allowed to ride the bus home for safety reasons on November 16, 2021. The district believes the dramatic decrease in inappropriate behavior is indicative of the "successful strategies and training that have been implemented by the team" as a result of the functional behavioral assessment and subsequent behavior intervention plan (BIP) developed in coordination with the Kansas Technical Assistance System Network (TASN).

The district denies not providing the student with access to his AAC systems during the three videotaped observations. USD #427 stated,

> The videos of the student were taken when he was working. As part of his autism diagnosis, the student displays some obsessive-compulsive disorder-type tendencies. As reported by his teacher, Mrs. South, the student is obsessive about keeping non-work-related items out of his work-area, and as a result will always move his device away and/or give his communication device (iPad or choice board with picture icons) to a staff-person when he is engaged in his work. These short videos are not evidence of the staff withholding his communication device but rather evidence that the student prefers not to have his communication device on the table when he is working. In addition to his iPad, the student has multiple choice boards with picture icons that are always accessible, both inside his work area and in the classroom.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #437.

The student has a BIP dated April 27, 2021 to address aggressive behaviors. The functional behavioral assessment (FBA) hypothesized that the aggressive behavior was communicating the student wanted to escape an activity, task, person, or area. The BIP includes the following replacement behavior: The student will communicate his wants and needs to peers and adults by utilizing his AAC device or pointing to picture icons.

Photos of the student's work space show several charts of picture icons to be used to communicate the student's visual schedule as well as a choice board to allow the student to choose a picture icon to complete the sentence "I want _____."

Three videos were provided showing the student working in his work space. The first video is 25 seconds and shows the student working on a writing task wearing his noise cancelling headphones. The second video is 41 seconds and

shows the student interacting with a staff member at a table top activity and following directions. The third video is 27 seconds and shows the student working on an activity wearing his noise cancelling headphones when he becomes upset and bangs his head on the wall twice and then gets up to leave the area. The student does not appear to have access to his iPad in any of the videos but it is unclear from the angle of the videos if the choice board was available to the student. Both videos of the work space show the use of visual schedules for the student.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a)(2)(ii) require school districts to develop an IEP which includes positive behavioral interventions, supports, and other strategies to address any behavior that impedes the learning of the student or the learning of others.

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, interviews and documentation found the student displays aggressive behavior in the classroom that impedes his learning and the learning of others. A BIP was developed on April 27, 2021 which includes using an AAC device or pointing to picture icons as a means of communicating his wants and needs in order to decrease the need for the student to use aggressive behavior to escape an activity, task, person, or area.

Behavior Data Charts show a decrease in the number of occurrences of aggression during the 2021-22 school year. Photos of the student's work space show the use of visual schedules and choice boards. While the iPad was not visible in the three videos, school staff indicated this was because the student preferred his work area to be uncluttered by extraneous items. The angle of the three short videos did not provide a

clear view of the workspace in front of the student or near to the student in order to see the choice board. In the one video where the student became upset and banged his head on the wall, he gets up to leave the area and it is unclear if he was seeking his iPad or choice board. School staff report that the student always has access to his iPad and choice board even if it not in his work area.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to implement the student's IEP, specifically by not following the BIP for using the AAC device or picture icons on his desk during the 2021-22 school year.

> ISSUE FOUR: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), shared personally identifiable information with other agencies during the 2021-22 school year without written consent.

Positions of the Parties

The foster parents reported that USD 437 created and released three videos to Sarah Feldhausen, Aetna insurance case manager, without the appropriate written parent consent in an effort to make the student eligible for a private residential treatment facility (PRTF) placement.

The district believes it appropriately disclosed the videos of the student to the insurance company under the exception in the Family Rights to Privacy Act (FERPA) allowing school districts to share information to an outside third party due to emergency medical needs. In this situation, the student losing his spot on the PRTF waitlist would be considered an emergency. Therefore, USD #437, and more specifically, the IEP team were acting under the FERPA exception "disclosure in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health and safety of the student and other individuals."

USD #437 reported that Ms. Feldhausen was initially invited to be a member of the student's school team at the request of the foster mother on April 15, 2021. The district explained,

Ms. Feldhausen was then also invited by the foster mother to subsequent IEP meetings and was included by the foster mother on many email chains with other members of the student's team. Ms. Feldhausen was specifically identified as a team member who should be included on the student's ongoing email communication thread at an IEP review meeting held on 8/17/21. Ms. Feldhausen reached out in late November, 2021 asking if the school still felt if the student would benefit from a PRTF setting (and whether or not he should remain on a waitlist for Lake Mary), and also requested some video footage of the student' abilities and behavior. Mrs. Erin Bennett, Dean of Behavioral Services for the district, replied to Ms. Feldhausen that the district believed a PRTF setting would still be beneficial, as she did not want the student to lose his spot on the waitlist, especially since the PRTF setting was originally brought up last year by the foster mother. During April of 2021, the student had a period of severe aggressive behavior which resulted in the foster parents bringing him to Stormont Vail for a crisis stay under the supervision of Dr. Kirby Pope. Dr. Pope recommended parents explore a PRTF setting – the student was denied a bed at KVC [Kaw Valley Center], but was extended access to the waitlist at Lake Mary. This information was communicated via a phone call by the foster mother to the student's teacher, Mrs. Michelle South.

As Mrs. Feldhausen was added to the student's team by the foster mother, and has been actively involved as an outside team member and support for the student, it was assumed that the district had a release of information with her. However, at this time we have been unable to find a release of information. Therefore, as we move forward, we will ensure that a release of information is signed by each member of the student's outside support team, that the release is stored in his special education file, and that team members are trained in this area as well.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #437.

The findings of Issue One are incorporated herein by reference.

The student's biological parents have not relinquished their parental rights and are the educational decision makers for the student under the IDEA. The foster parents are not the educational decision makers for the student and cannot provide written consent to release personally identifiable information about the student.

USD #437 has included Ms. Feldhausen in multiple email communications and released personally identifiable information about the student at the verbal request of the foster mother but without the written consent of the biological parent beginning in April 2021.

USD #437 acknowledged no written consent to release personally identifiable information was obtained from the biological parent prior to releasing the videos to Ms. Feldhausen.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.30(b)(1) require that the biological or adoptive parent of a student be presumed to be the parent for the purposes of the IDEA unless the biological or adoptive parent does not have the legal authority to make education decisions for the student.

Federal regulations implementing the IDEA at 34 C.F.R. 300.622(a) require that school districts obtain written consent from the parent or guardian of a student prior to disclosing personally identifiable information to a third party and to follow the requirements of the Family Education Rights and Privacy Act (FERPA) at 34 C.F.R. 99.

Federal regulations implementing the FERPA at 34 C.F.R. 99.36(a) and (c) allows personally identifiable information to be released to a third party without written parent consent if there is an articulable and significant threat to the health and safety of the student or other individuals. In that situation, the school district may disclose personally identifiable information about the student from their education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

The Student Privacy Policy Office (SPPO) is the office in the United States Department of Education which generates the federal regulations for FERPA and oversees the implementation of FERPA. In a guidance letter regarding the emergency exception to FERPA, the SPPO said the focus of the exception is on the word "emergency." It explained as follows:

> To be 'in connection with an emergency' means to be related to the threat of an actual, impending, or imminent emergency, such as a terrorist attack, a natural disaster, a campus shooting, or the outbreak of an epidemic such as e-coli. An emergency could also be a situation in which a student gives sufficient, cumulative warning signs that lead an educational agency or institution to believe the student may harm himself or others at any moment." See: Letter to Barrett, 23 FAB 21 (SPPO 2019).

In this case, USD #437 collected personally identifiable information about the student when it made the videos and this information was shared with the Aetna insurance case manager, a third party, without the written consent of the biological parent for the purpose of maintaining the student's place on the waitlist for PRTF services.

It is the conclusion of this investigator that maintaining the student's place on the waitlist for PRTF services is not sufficiently related to a threat of an actual, impending, or imminent emergency, and so would not be considered "articulable and significant threat to the health and safety of the student". Therefore, this investigator further concludes that maintaining the student's place on a waitlist for PRTF services is not considered to be an exception to the consent requirements under FERPA or special education regulations.

In addition, USD #437 has included the Aetna insurance case manager in IEP team meetings and in email communication since April 2021 at the request of the foster mother but without the written consent of the biological parent.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to obtain appropriate written consent from the parent prior to releasing personally identifiable information to a third party during the 2021-22 school year.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300.322(a) which require school districts to provide parents with the opportunity to participate in the development of the IEP.

   In this case, the student's current IEP does not include a plan for providing special education and related services when the student is quarantined. While it is unclear if the foster parents were included in the discussion of services to be provided during the quarantine period in September, it is clear that USD #437 failed to provide the biological parents who are the educational decision makers for the student in any discussion regarding whether services (if any) were necessary to be provided during the quarantine period in September.

B. Federal regulations at 34 C.F.R.300.324(b)(1)(i) and (ii)(A) which require school districts to review a student's IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected progress toward those annual goals.

   In this case, the student's IEP Goal Progress Reports reflected the student was making inadequate progress towards the majority of his IEP goals during the first semester of the 2021-22 school year. However, USD #437 did not reconvene the IEP team to review and revise the student's IEP, as appropriate.

C. Federal regulations at 34 C.F.R. 300. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, USD #437 failed to provide transportation as a related service for the student on five occasions during the 2020-21 school year after January 4, 2021 which is within the federal investigative timeline of one year from the date the allegations were made.

D. Federal regulations implementing the IDEA at 34 C.F.R. 300.622(a) which require that school districts obtain written consent from the parent or guardian of a student prior to disclosing personally identifiable information to a third party.

   In this case, USD #437 acknowledged it released videos of the student to a third party without obtaining written consent from the biological parent. In addition, the district has included a third party on email communication without obtaining written consent from the biological parent.

Based on the foregoing, USD #437 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #437 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

   a. Comply with federal regulations at 34 C.F.R. 300.322(a) which require school districts to provide parents with the opportunity to participate in the development of the IEP.

   b. Comply with federal regulations at 34 C.F.R.300.324(b)(1)(i) and (ii)(A) which require school districts to review a student's IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected progress toward those annual goals.

   c. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.323(c)(2) and state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) that require school districts to ensure

that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

d. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.622(a) which require that school districts obtain written consent from the parent or guardian of a student prior to disclosing personally identifiable information to a third party.

2. No later than February 14, 2022, USD #437 will reconvene the IEP team, including the biological parents, to review and revise the student's IEP to address the lack of expected progress toward the annual IEP goals. At that meeting, the IEP team, including the biological parents, must also consider whether the student needs additional supports during periods of quarantine in order to make appropriate progress, and, if so, develop a plan to provide the student with FAPE during periods of quarantine. USD #437 will provide the parent and SETS with a copy of the resulting IEP and any appropriate prior written notice provided to the parent within 10 business days following the IEP team meeting.

3. It is noted that USD #437 has already developed a plan to reimburse the foster parents for providing the required transportation as a related service on the five dates in the 2020-21 school year. No later than February 1, 2022, USD #437 will provide SETS with a copy of the purchase order or other written documentation for this reimbursement.

4. It is also noted that USD #437 has already conducted district-wide training with building principals to ensure that school staff were aware that students who receive special transportation and are not allowed to ride the bus for any reason are being denied a special education service and this denial would be considered as an OSS and count towards the 10-day disciplinary change of placement. No later than February 1, 2022, USD #437 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the

name and credentials of the person who provided the training. In addition, USD #437 will provide SETS with any handouts and/or a copy of the presentation.

5. Effective upon receipt of this decision, the district shall cease to provide personally identifiable information regarding this student with all third parties who previously have been provided with any personally identifiable information regarding this student about the student until such time as the biological parents provide written consent for such disclosures. No later than January 25, 2022, the district shall provide the biological parents with written notice that it has ceased to provide this information to third parties. USD #437 shall provide a copy of this written notice to SETS no later than February 1, 2022.

6. No later than March 15, 2022, USD #437 shall provide training to the members of the student's IEP team regarding the requirements to release confidential information as described in both the IDEA and FERPA. At a minimum this training must address the definition of parent, the requirements to obtain written consent, and the exceptions to FERPA. USD #437 shall provide SETS with the name and credentials of the person providing this training along with copies of training materials as well as a sign-in sheet documenting the persons who participated in the training no later than March 18, 2022.

7. Further, USD # 437 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #501
ON DECEMBER 13, 2021

DATE OF REPORT: JANUARY 10, 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on December 16 and 17, 2021. On December 16, 2021 and January 6, 2022, the investigator spoke via telephone with Dr. Jennifer Harrington, Director of Special Education for USD #501.

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

- IEP for this student dated December 18, 2020
- IEP for this student dated October 28, 2021
- Online academic calendar for the district
- Agenda for January 4, 2022 staff training
- District Resolution Proposal
- Accommodations document – teacher
- Accommodations document – student
- IEP at a Glance attendance sheet

Background Information

This investigation involves a fifteen-year-old girl who is enrolled in the tenth grade in her neighborhood high school. The student has received special

education services in the district since fourth grade. She has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) combined type and Anxiety.

Issue

In her written complaint, the parent identified the following issue:

The district has failed to provide the student with accommodations specified in her IEPs.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Parent's Position

The parent asserts that for the entire first semester of the 2021-22 school year, the student's chemistry teacher refused to implement the accommodations specified in the student's IEP. Specifically, the parent contends that the chemistry teacher did not provide the student with class notes, did not accommodate the student's reading needs, did not check for understanding when delivering instruction to the student, did not offer breaks, and did not shorten assignments According to the parent, the teacher stated that the student could take a picture of what was written on the blackboard as a way of getting class notes, but the parent asserts that strategy was ineffective for those occasions when the student was absent.

The parent also contends that the student was not provided with required accommodations for the first quarter of the 2021-22 school year in her English and geometry classes but those situations have been resolved.

District's Position

The district does not dispute the parent's allegations regarding the lack of provision of accommodations by the student's chemistry teacher.

Investigative Findings

The "Accommodations" section of the student's December 18, 2020 IEP stated that the student required the following accommodations:

- Extended time on tests, quizzes, and assignments (1.5 x the original amount);
- separate, quiet, small group or individual setting provided;
- use of a handheld or electronic calculator;
- copy of classroom notes;
- text to speech and speech to text (access to apps on Chromebook);
- shortened assignments;
- not punished or counted off for misspelled words when unable to use spell check; and
- use of a student generated math formula/equation sheet.

The Accommodations section of the student's October 28, 2021 IEP states that the student requires the following accommodations:

- Extended time to complete assignments and assessments (1.5 x the original amount);
- read aloud (on daily assignments and assessments);
- checks for understanding for reading tasks;
- access to spell checker;
- access to a handheld or electronic calculator;
- copy of lecture notes;
- separate, quiet setting to complete assignments;
- preferential seating;
- scheduled breaks to help manage pain symptoms and to help her refocus as needed;

- accommodations related to managing physical needs in light of her medical diagnosis – bathroom breaks, frequent snacks, etc.; and
- access to the use of a paper copy of formulas/equations in math classes.

Parent/teacher conferences for the district were held on October 20 and 21, 2021. At that time, the parent was concerned about the student's failing grades in English, geometry, and chemistry. The parent met with the chemistry teacher and asked the teacher if she was aware that the student had an IEP. According to the parent, the teacher stated that she did not know that the student had an IEP but stated that she would not provide any accommodations that were specified in the student's IEP.

The parent then spoke with special education staff about her concerns and learned that a substitute teacher had been assigned to the student's English class at the beginning of the 2021-22 school year. The parent told the investigator that since the regular teacher returned to the classroom, accommodations were provided, and the student's grades improved.

The parent told the investigator that the student had been enrolled in an advanced level geometry classroom at the start of the 2021-22 school year. After learning of the parent's concerns, the district re-assigned the student to a different level geometry class. According to the parent, this change was positive for the student, and her grades improved.

The parent told the investigator that she was satisfied with the changes that the district made with regard to the student's English and geometry classes, but she continued to see no action taken regarding the student's chemistry class. The parent states that she made additional contacts with special education department staff and building administration regarding the student's chemistry teacher.

Summary and Conclusions

The district stipulates that the student's IEP was not implemented as written with regard to the provision of general education accommodations in the student's chemistry class. A violation of special education statutes and regulations is substantiated on this issue.

Actions Taken By the District After This Complaint Was Filed

After this complaint was filed on December 13, 2021, the parent and the school-based team began to address the parent's request that the student be considered exempt from tests or assignments where accommodations were not provided. The parent told the investigator that she agreed with the school's proposal that the student's chemistry grade would be frozen at 62%, that the student would not be required to attend chemistry class for the remainder of the semester, and that the student would not be required to take a final chemistry exam.

The parent remained concerned, however, about on-going services for her daughter, about the failure of the chemistry teacher to provide accommodations to other special education students in the class, and about general communication regarding the needs of special education students in the building since the chemistry teacher had told the parent that she was unaware that the student had an IEP.

On December 27, 2021, the parent met with the director of special education and the building principal to further discuss her concerns. On January 3, 2022, the director of special education provided the parent and the investigator with the district's proposed plan to address issues raised in this complaint. The director and the investigator reviewed that plan in a telephone call on January 6, 2022 and modifications were made to the document for the purpose of clarity.

The district's plan includes the following actions:

- All certified staff and paraeducators at the student's school received training on January 4, 2022 focusing on student accommodations/ modifications for special education students. The training involved an open guided discussion of what to look for in a student's IEP at a Glance. Special education service providers were available to provide any needed clarification.
- Each general education teacher was provided with an IEP at a Glance for all of the special education students enrolled in their classes and were provided the opportunity to ask special education service providers any clarifying questions about student accommodations.

- Any certified staff member who was absent for the January 4, 2022 session will be provided training within one week of their return to work.
- Access to IEP at a Glance documents was established through Google Drive. Each IEP case manager created a folder for his/her caseload. A folder for each student on those caseloads was then added to each special education teacher's folder. A PDF of each student's IEP at a Glance was added to each student's folder. Every teacher on a student's schedule has been given access to the student's folder. If teachers changed for the second semester, access has been modified accordingly.
- If a student's IEP is amended through an annual review, an updated IEP at a Glance will be added to the student's file with a "2" added to the tile of the document.
- IEP at a Glance forms are also shared via email. When that occurs, teachers receive an email notification that the document had been shared. When teachers open the email, they can click on a PDF of the IEP at a Glance and access the document.
- The Special Education Consulting Teacher was also given access to student files and is notified via email when a student's IEP at a Glance is shared with a classroom teacher.
- At the start of each new semester, general education teachers will be asked to sign off that they have received their student's IEP at a Glance in either electronic or hard copy form.
- Special education department and administration at the building will follow up in weekly department meetings with general education teachers 4 weeks after completion of initial training to ensure that the accommodations/modifications specified in the IEPs of special education students in the building are being provided appropriately for each student.
- As a part of each student's annual IEP review, general education teachers and students will be asked to complete a "Verification Form" related to the provision of accommodations/modifications.
- Special education teachers will verify with each special education student that they are receiving the accommodations in their general education classes on a consistent basis.

Additionally, with regard to the student at the center of this complaint, the following plan will be implemented:

- The student's IEP will be amended prior to January 17, 2022 to reflect a class change. A draft amendment has been developed and will be provided to the parent.
- The student's revised IEP will also include an amendment to the "Supports for School Personnel" portion of the document. The section will include the statement "Teachers will receive a hard copy of the student's IEP at a Glance at the beginning of each new semester, or whenever the student's IEP is amended."
- The parent and the student will be provided the opportunity to choose between receiving hard copies of notes or of receiving notes electronically. If the hard copy option is chosen, the student and parent will also determine where notes will be picked up.

Corrective Action

Information gathered in the course of this investigation has identified noncompliance with special education statutes and regulations. Specifically, violations were substantiated with regard to 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) which require that the district provide a FAPE to students by implementing their IEPs as written.

Therefore, USD #501 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written and by providing the student with the accommodations that are specified in her October 28, 2021 IEP unless or until those accommodations are amended or deleted by the student's IEP team.

2) Submit to SETS, by no later than February 1, 2022, a copy of an amended IEP for this student and associated prior written notice documentation reflecting changes to the student's class schedule and modifications to "Supports for School Personnel."

3) Submit to SETS, by no later than June 1, 2022, a summative report of the district's implementation of its plan to address the issues raised in this complaint. The summary should include:

   a) Verification that all general education staff members have received the training initially delivered on January 4, 2022;

   b) Evidence to show that follow up on accommodation implementation was completed 4 weeks after the January 4, 2022 training; and

   c) Evidence to show that accommodation verification forms were completed by staff and students.

   d) If verification forms indicate that accommodations have not been provided to any or all students as required by each student's IEP, the district's summative report should also include a plan for additional staff training and monitoring of accommodation implementation for the 2022-23 school year.

4) Further, USD #501 shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated,

the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #453
ON DECEMBER 13, 2021

DATE OF REPORT JANUARY 19, 2022

This report is in response to a complaint filed with our office on behalf of _____ by Janae Gulley, Adoption Permanency Specialist for St. Francis Ministries. In the remainder of the report, _____ will be referred to as "the student" and Ms. Gulley will be referred to as "the complainant."

It is noted that Laura Franken has been appointed the education advocate for this student by Families Together and, as such, has all of the rights of a parent under the law regarding special education. Ms. Franken provided a signed written consent on December 22, 2021 to share personally identifiable information with the following persons for the purposes of this investigation: the complainant; Janell Carter, Family Support Worker for St. Francis Ministries; and _____, Foster Parent. In the remainder of this report, Ms. Carter and Ms. _____ will be referred to by their titles.

The complaint is against USD #453 (Leavenworth Public Schools). In the remainder of the report, USD #453 will be referred to as the "school," the "district" or the "local education agency (LEA)."

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE and the district both initially received the complaint on December 13, 2021. Because the district's holiday break was a total of 12 days between December 22, 2021 and January 4, 2022, the 30-day timeline to investigate this complaint was extended by seven days and ends on January 19, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the complainant by telephone on December 17, 2021. A second interview was conducted with the complainant and the Family Support Worker on January 12, 2022. It is noted that the foster parent was provided with opportunities to schedule an interview as part of the investigation on December 31, 2021 and again on January 3, 2022 but that she did not respond.

USD #453 made the following school staff available for a telephone interview on January 5, 2022:

- Cathy Redelberger, Director of Special Education
- Rebekah Varvel, Assistant Director of Special Education
- Vicki Tharp, Special Education Teacher
- Mandi Manczuk, Special Education Paraprofessional

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the complainant and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) dated April 14, 2021 and amended on May 17, 2021
- IEP dated April 4, 2021 and amended on September 17, 2021
- Evaluation Report dated October 11, 2021
- St. Francis Ministries Worker/Child Visit Activity Report dated October 19, 2021
- Student's Daily Home Note dated October 19, 2021
- IEP Goal Data Sheet dated October 19, 2021
- Teacher's handwritten classroom notes dated between October 13 and October 19, 2021
- Life Skills Classroom Lesson Plans for the week of October 18 – 22, 2021
- IEP Team Meeting Notes dated November 10, 2021
- Prior Written Notice (PWN) dated November 10, 2021
- Children's Mercy Hospital Safety, Care & Nurturing (SCAN) Clinic Notes written by Danielle Horton, M.D., dated November 12, 2021
- Meeting Notes dated November 17, 2021 between school staff and staff from the Kansas Department of Children and Families
- PWN dated December 20, 2021
- Daily Behavior Sheets dated between August 16 and December 14, 2021

- Aggressive Behavior Data Charts dated between August 16 and December 14, 2021
- Daily Classroom Schedule for the 2021-22 school year showing the eight students, one classroom teacher, and three paraprofessionals by five minute increments starting at 8:05 a.m. and ending at 3:30 p.m.
- Services Log for Board Certified Behavior Analyst (BCBA) and Registered Behavior Technician (RBT) Classroom Support for the 2021-22 school year
- USD #453 Response to the Allegations dated December 29, 2021
- USD #453 Calendar for the 2021-22 school year
- Picture of the Sensory/Quiet Room

Background Information

This investigation involves a nine-year-old male student who is eligible for special education and related services under the exceptionality category of autism. The most recent reevaluation was conducted on October 11, 2021 and states, "The student has also been diagnosed with pica and has been reported to be impulsive and quick in regards to eating non-food items." The student moved to live with the foster parent in March 2021 and has been enrolled in USD #453 since that time. He is currently a fourth grade student at Henry Leavenworth Elementary School and receives special education in the Life Skills Program as well as adaptive physical education, speech/language therapy, and occupational therapy.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the complainant raised one issue that was investigated.

> ISSUE ONE: The USD #453, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to

implement the student's IEP, specifically by not providing the one-to-one paraprofessional support during the 2021-22 school year.

Positions of the Parties

The complainant alleges that USD #453 has not provided the student with a one-to-one paraprofessional as required by his IEP. Due to the behaviors associated with the student's autism and pica, he requires constant supervision to keep from getting hurt.

Since his enrollment in USD #453, the student has frequently arrived back at the foster home at the end of the school day with bruises, scratches, and red marks which the complainant and the foster parent believe are the result of lack of appropriate supervision at school.

The complainant indicated that the Family Support Worker conducted a classroom observation of the student on October 19, 2021. Significant concerns were noted with appropriate supervision of the student on that date including allowing the student to have a "root" or stick from the playground to play with and to chew on. The notes from the observation indicated the classroom was disorganized, chaotic, and understaffed. The observer reported that the classroom staff appeared to be overwhelmed and did not provide the constant supervision the student needed for safety reasons associated with his autism and pica during the observation.

The complainant reported the student was medically evaluated by Children's Mercy Hospital for suspected abuse on November 12, 2021 and the physician concluded that the student's injuries were not abuse but instead the result of play at school. The complainant reported that the student has been observed to roll around on the floor and to dart after objects to put in his mouth while at school because he is not being appropriately supervised by a one-to-one paraprofessional.

USD #453 reports the student's IEP in effect during the 2021-22 school year includes "attendant care" and "instructional support" as well as specialized instruction, adaptive physical education, speech/language therapy, and occupational therapy services but does not include a one-to-one or personal paraprofessional for support. The district reports the IEP is implemented as written and furnished both student and staff

schedules as well as data collection sheets to document that these services are being provided to the student. The student is placed in a class with only eight students who are supported by a team of three paraprofessionals, one special education teacher, two registered behavior technicians, and one board certified behavior analyst.

In addition, the district highlighted the progress the student has made towards reducing his aggressive behavior in the classroom during the 2021-22 school year as shown by the behavior data charts. The district indicated that "This degree of progress would not be possible if he had not been provided the level of adult support required by his IEP."

The district acknowledged that the foster parent has suspected abuse by school staff and stated,

> The basis for the complaint appears to stem from the fact that the student sometimes has bruising, marks, and scratches on his body, and the complainant believes this is occurring because he is not provided with adult support as required by his IEP. While the district appreciates her concern for the child, this is simply not the case.
>
> The student engages in aggressive and self-harming behaviors both inside and outside of school. He often comes to school with marks and bruises that he did not have the previous day, and the nurse records when this occurs. She also records any marks or bruises that occur during the school day. Any marks or bruises that occur during the school day are most often a result of the student's behaviors but do not represent a lack of adult support.

USD #453 reported that the student's IEP team met to specifically discuss the concerns related to the level of supervision at school on November 10, 2021 and that school staff met with DCF regarding these same concerns on November 17, 2021. School staff stated,

> His daily schedule was reviewed by the team, including which individual staff members are assigned to him throughout his day. DCF has been included in these discussions and has affirmed that the District is providing

> the level of adult support required by the student's IEP. DCF has also acknowledged that due to the nature of his behaviors, the student is likely to get marks and bruises in the school setting even with adult support by his IEP.

USD #453 believes they have provided the level of adult support required by the student's IEP through the provision of attendant care, instructional support, specialized instruction, adaptive physical education, speech/language therapy, and occupational therapy services. They report there is no requirement for a one-to-one or personal paraprofessional in the student's current IEP and they deny the complainant's allegation that the student's IEP is not being implemented.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the complainant, the Family Support Worker, and LEA staff in USD #453.

The current IEP for the student was developed on April 14, 2021 and amended on May 17, 2021 and again on September 17, 2021. The education advocate participated in the development of these IEPs. All of the IEPs state, "Due to the high needs and safety concerns, the student requires one-to-one support at all times of the day in order to be successful within the Life Skills special education classroom." In addition, the IEP requires either one-to-one attendant care or one-to-one instructional support in the general education setting due to "the student's high needs and safety concerns."

The IEP in effect for the 2021-22 school year includes ten goals/objectives and requires the following special education and related services beginning on August 16, 2021 through April 13, 2022: 259 minutes per day of specialized instruction and instructional support in the special education setting; 90 minutes per day of attendant care in the general education setting for recess, lunch, and transitions; 60 minutes per day of instructional support in the general education setting for specials classes; 30 minutes per month of direct adaptive physical education (APE) and 10 minutes per month of indirect APE; 50 minutes per week of direct speech/language therapy; and 30 minutes per week of direct occupational therapy.

The IEP notes that the attendant care in the general education setting would gradually increase from 30 to 90 minutes per day by one minute increments as the student is able to safely handle that environment. The IEP notes that the instructional support in the general education setting for specials classes would also gradually increase from one minute to 60 minutes per day by one minute increments as the student is able to safely handle those classes.

The Daily Classroom Schedule for the 2021-22 school year shows that there are eight students, one classroom teacher, and three paraprofessionals assigned to the Life Skills classroom. The schedule documents and interviews confirmed that the student is either working one-to-one with an assigned school staff or a school staff is assigned to provide supervision throughout the entire school day starting at 8:05 a.m. and ending at 3:30 p.m. The student's daily schedule is as follows:

Time	Activity	Staff Assigned
8:05 -8:10 a.m.	Arrival	Mandy Manczuk
8:10 – 8:35 a.m.	Breakfast	Mandy Manczuk
8:35 – 9:00 a.m.	Morning Meeting	Mandy Manczuk
9:00 – 11:00	IEP Goal Work	Vicki Tharp
11:00 – 11:35	Recess	Vicki Tharp
11:35 – 12 noon	Lunch	Vicki Tharp or Carisma Mueller
12 noon – 2:00 p.m.	IEP Goal Work	Mandy Manczuk
2:00 – 2:45 p.m.	Structured Social Skills / Play	Mandy Manczuk
2:45 – 3:00 p.m.	Snack	Mandy Manczuk
3:00 – 3:10 p.m.	Pack up	Mandy Manczuk
3:10 – 3:30 p.m.	Dismissal	Mandy Manczuk

The complainant specifically referred to a classroom observation made by the Family Support Worker on October 19, 2021 as documentation that the one-to-one paraprofessional supervision was not being provided by USD #453. For this reason, investigation focused on this date for the implementation of the IEP.

The St. Francis Ministries Worker/Child Visit Activity Report documents a classroom visit between 12:30 and 1:00 p.m. on October 19, 2021. According to the student's daily schedule, he should be working on his IEP Goal Work with Ms. Manczuk. The Family Support Worker stated in her report:

> When this worker arrived to check in at front office, the principal accompanied this worker to the student's classroom. Upon entering, Mandi [paraprofessional] was sitting in a chair facing the door, Vicki [special education teacher] was sitting in a chair at a desk, the student was sitting on the floor in front of a projector screen watching a video with other children sitting on floor around him. The student was holding a red chew toy in his hand, periodically putting it into his mouth to chew. This worker went to sit by the student, when the student saw this worker, he grabbed this worker's hand to lead this worker away from the video screen, into what Vicki referred to as "his quiet room." The quiet room appeared to be a closet, with plywood walls and one mat on the floor. Once in the student's "quiet room," he laid down on the mat on the floor with an iPad that was playing a video. Vicki followed this worker and the student, when the student saw Vicki, he stood up to approach her and began reaching into her fanny pack repeatedly saying, "Brown, brown." This worker asked the student not to get into Vicki's personal space, then this worker asked what the student was looking for. Mandi responded from a distance, "his stick." Vicki responded, "it's not a stick, it's a root." Vicki told the student she didn't have it and advised the student to go look in his "quiet room" for the "root." It was observed that the student felt comfortable approaching Vicki's fanny pack, as though he had gone to this location for his items before. This worker reminded Vicki and Mandi that the student should not have possession of a "stick or a root." The student found his "root" under his mat in his "quiet room." This worker gently asked the student to either hand over the stick for this worker to throw away, or the student could throw it away himself. Mandi and Vicki said that they would put it in his backpack for later. This worker advised that it needed to be thrown away now at school, otherwise they would be setting up his placement for a tantrum when he goes home with it in his backpack later. The student refused to give the stick to anyone,

exited the quiet room, opened a glass door that led to another classroom area, and went in that room to lay down on the floor with his stick. This worker got down to the student's level and gently reminded him the stick would need to go to the trash can, when the student handed it to this worker, but then quickly snatched it back. The student got up from the floor, and went to sit at a chair at a table by the window. During this time, there were other children moving about the room, Vicki was following this worker and the student around, until she was tasked with helping two other paras with another child. During this time that Vicki was distracted, the student crawled under a white curtain at the entrance of the bathroom, this worker followed him, where he was putting his chew toy into the toilet with intentions of putting it back into his mouth. This worker was able to get the toy from the student, wash it in the sink with soap and hot water, then explained to the student he could not put his toys in the toilet. After exiting the bathroom, this worker sat in a chair at a table next to the window, observing the student's activity as he wollered around on the floor, easily distracted by others, at one point trying to take a toy from another child, then crawling around and messing with anything that he could. The student came near where this worker was sitting, he knocked a cup off of the table intentionally causing it to flail out the window. The student went back to the floor. Once Vicki was done with her other task, Vicki went over to the student, asserting herself, she stood over the student trying to trade the student a pencil for the stick. She forcefully took away the stick, this worker interjected the pencil exchange since that was not an appropriate alternative, then this worker asked Vicki to please put the stick in the trash, handing the pencil back to Vicki and redirecting the student to another activity. The student was upset and got up to push and yell at Vicki "No! (inaudible other words)" The student calmed down, then laid back down on the floor on his back, scooting around freely. This worker laid down on the floor with the student to let him know this worker was going to be leaving. The student gave this worker a hug and a fist bump. Observation of the child in his classroom setting was unorganized, and chaotic with lack of proper supervision. The student was observed to be dysregulated and unsettled, bored without organized activity or

> direction, the student was aggressive and did not use manners, the student did not use his words rather yelled, pointed, and whined. The student was overstimulated and unable to focus. Observation in the classroom setting is not equivalent to previous observations in the home. Visit ended at 1:00pm.

Ms. Tharp was asked to explain the "root" the student was fixated with during the observation by the Family Support Worker. She explained that the student enjoys digging in the dirt at recess and often collects sticks or twigs that he has unearthed and attempts to bring these into the classroom. This is not allowed and all "roots" are supposed to be left outside; however, the student does occasionally bring a "root" into class from recess and will hide it in various places in the classroom. When a "root" is discovered, it is disposed of after redirecting the student to another more appropriate activity or sensory toy so as to avoid triggering a tantrum or melt-down.

Both Ms. Tharp and Ms. Manczuk acknowledge that the Family Support Worker visited the classroom on October 19, 2021. However, they reported that the Family Support Worker took the student from the scheduled classroom activity in order to visit with him in a one-to-one setting. Both indicated they offered to stay with the student but the Family Support Worker refused their assistance. Ms. Tharp stated that she remained in the vicinity of where the student and the Family Support Worker were visiting but allowed them to visit and interact without her interference. She reported that the student became increasingly upset during his interactions with the Family Support Worker and that she needed to intervene. Once the Family Support Worker left the classroom, the student was redirected back into the classroom routine.

The teacher's handwritten classroom notes regarding the student dated October 19, 2021 state, "The student wanted to be left alone. Had a visit from Case Manager. Was here between 15 and 20 minutes. Played in quiet room and play area – Told us to go away both times."

The IEP Goal Data Sheet dated October 19, 2021 shows the student completed both the morning and afternoon task box activities for reading and math as well as participated in two parallel play activities. A handwritten note states, "There were a few

times he bit or kicked but none were being truly mean or aggressive. They were leave me alone or he looks upset about something."

The Children's Mercy Hospital Safety, Care & Nurturing (SCAN) Clinic Notes written by Danielle Horton, M.D., on November 12, 2021indicate she did a physical exam of the student as well as reviewed documentation provided by both the foster parent and the school district including photos. Based on that data, Dr. Horton made the following conclusion:

> Based on the currently available information, there are no specific disclosures of abuse and the injuries visualized in photos are non-specific. While abusive injury cannot be ruled out, most of these injuries are in areas a child of the student's age and developmental state could sustain through routine play and activity.

Dr. Horton recommended that DCF evaluate the student's care environments. She also recommended that both home and school should be supportive and provide appropriate supervision to address the student's developmental and behavioral needs.

School staff and DCF met to review the student's program on November 17, 2021. Handwritten notes from the end of that meeting state, "Keep doing what we're doing."

Applicable Regulations and Conclusions

It appears that all parties involved in the investigation of 22FC453-001 are aware of the appropriate procedures for reporting incidents of suspected abuse/neglect and the authority of the Kansas Department of Children and Families to conduct these investigations. The IDEA does not address abuse/neglect issues or the investigation of such allegations and therefore, no conclusions were made related to the substance of these issues. The documentation provided related to issues of abuse/neglect was considered only as it relates to appropriate supervision being provided to the student by USD #453.

The focus of this investigation is on the federal regulations implementing the IDEA at 34 C.F.R. 300.301 which require a free appropriate education (FAPE) be provided to students with disabilities who are ages three through 21. Federal regulations

implementing the IDEA at 34 C.F.R. 300.17(d) define FAPE as providing the special education and related services in conformity with the IEP.

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, interviews and documentation found the student has a current IEP that states, "Due to the high needs and safety concerns, the student requires one-to-one support at all times of the day in order to be successful within the Life Skills special education classroom." The IEP requires 259 minutes per day of specialized instruction and instructional support in the special education setting.

In addition, the IEP requires either one-to-one attendant care or one-to-one instructional support in the general education setting due to "the student's high needs and safety concerns." The IEP requires 90 minutes per day of attendant care in the general education setting for recess, lunch, and transitions as well as 60 minutes per day of instructional support in the general education setting for specials classes.

USD #453 provided the daily schedules of the eight students in the Life Skills Program, the three paraprofessionals, and the special education teacher. The schedule shows that the student is assigned supervision by either Vicki Tharp, the special education classroom teacher, or Mandi Manczuk / Carisma Mueller, two of the Life Skills Program paraprofessionals throughout his school day starting at 8:05 a.m. until 3:30 p.m. and in all settings throughout the school environment. Ms. Tharp and Ms. Manczuk confirmed that they are responsible for working one-to-one with the student and supervising the student in all classroom activities on a daily basis.

The complainant specifically refers to the October 19, 2021 observation as documentation that the required one-to-one supervision is not being provided to the student. The Family Support Worker's written observation initially shows the student was participating in a class activity watching a video with peers and being supervised by

both Ms. Tharp and Ms. Manczuk when she entered the classroom. The Family Support Worker reported school staff subsequently failed to provide the appropriate supervision of the student during the classroom visit. However, the school staff reported the Family Support Worker and the student left the classroom activity to visit in a one-to-one setting and, while Ms. Tharp did remain close by, she did not interfere with the interactions between the student and the Family Support Worker during the 20-30 minute visit.

The documentation shows the student was not provided one-to-one support by school staff during the October 19, 2021 observation; however, it also shows the Family Support Worker did not simply observe the student in the classroom setting but instead interacted with the student and removed him from the scheduled classroom activity and away from his supervision.

The explanation from school staff that they believed the Family Support Worker wanted to visit one-to-one with the student and that they did not want to interfere with the interactions between the student and the Family Support Worker is plausible. The school staff assumed that the Family Support Worker would provide the one-to-one supervision of the student during the classroom visit. While there is some question as to the closeness of the supervision provided by school staff on October 19, 2021 with the student was able to bring "a root" into the classroom and hide it in the "quiet room" after recess, there is no clear lack of one-to-one support for the student during the observation.

The complainant specifically referred to a medical statement that shows the appropriate supervision is not being provided at school. The documentation dated November 12, 2021 from Children's Mercy Hospital provided by the complainant noted that "most of these injuries are in areas a child of the student's age and developmental state could sustain through routine play and activity." The attending physician from the Children's Mercy SCAN Clinic recommended that both the home and school environments be evaluated for supervision. DCF met with USD #453 on November 17, 2021 and recommended the district continue to provide the current program and level of support/supervision.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide the attendant care and instructional support services as required by the IEP during the 2021-22 school year.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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)

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #203
ON DECEMBER 21, 2021

DATE OF REPORT: JANUARY 19, 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on December 31, 2021 and January 7, 2022. On January 4, 7, and 14, 2022, the investigator spoke via telephone with Dr. JaKyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative.

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

- IEP for this student dated October 6, 2021
- Amended IEP for this student dated January 5, 2022
- Choice Novels Final Project: Project Options
- General Rubric for All Projects
- Modified Choice Novels Final Project
- English final completed by the student
- Grade report for the student for the first semester of the 2021-22 school year

Background Information

This investigation involves a 17-year-old boy who is enrolled in the twelfth grade in his neighborhood high school. The student has been diagnosed with ADHD.

At the time this complaint was filed, the student was receiving 70 minutes of special education services twice a week in a special education setting and 210 minutes of special education support twice a week in the general education classroom.

Issue

In her complaint, the parent alleges the following:

> The student's high school is not following the IEP Plan that has been agreed upon by both the school and the parents.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Parent's Position

The parent alleges that the district's failure to provide the student with the accommodations specified in his IEP resulted in the student being unable to independently complete a class final in English. The student told the parent that he had not received any help on the final from his special education teacher, his English teacher, or a paraeducator.

According to the parent, she guided the student through the assessment which the student completed and submitted online. However, the student's teacher believed that the student had plagiarized his work and referred the student for disciplinary action. It is the position of the parent that had the student been provided with the accommodations specified in his IEP, this situation could have been avoided.

District's Position

It is the position of the district that the student's IEP was implemented as written.

Investigative Findings

According to the section of the student's October 6, 2021 IEP entitled "Present Levels of Academic Achievement and Functional Performance," the student is "delayed in processing information provided by his class teachers" and is "unable to process multi-level instructions and follow them. Instead, instructions need to be provided in small blocks, one at a time."

In the same section of the student's October 6, 2021 IEP, the student is described as being "unable to take initiation in completing assignments on an independent basis" and has difficulty in identifying the main idea and answering inference and cause and effect questions at the 11th and 12th grade reading level.

The "Program Modifications, Accommodations, and Supplementary Aids and Services" portion of the student's October 6, 2021 IEP specifies that the student be provided with the following accommodations/modifications:

- Allowed the use of a calculator;
- Computer use with voice to text abilities;
- Extended time up to 1.5 times;
- Five minute breaks during a regular scheduled class period;
- Preferential seating near teacher to reduce off task behavior;
- Separate smaller, quiet setting for large/lengthy assignments and assessments;
- Shortened assignments when deemed appropriate by the general education and special education teacher;
- Teacher notes provided; and
- Transcribe allowed on lengthy writing assignments.

On December 14, 2021, the student's English 4 teacher assigned an in-class semester final assignment related to The Lord of the Flies. The students in the class were to select from among five response style options:

- Essay
- Slides
- Art Analysis Display
- Playlist
- Diss Track

The student selected the Slides option. According to the district, modifications would have been available to the student had he selected the Essay, Art Analysis Display, or Playlist option because the general requirements under these options included more writing. The Slides and Diss Track option requirements did not have the same level of written response, so no further modifications were offered to the student.

Students who selected the Sides option were required to include the following:

- An introduction to the novel, author, and selected character;
- Character description, type and character archetype;
- An explanation of the character's situation archetype and its connection to a theme in the novel;
- An analysis of how the character's archetype/identity shaped or influenced their situation archetype throughout the novel;
- The answer to the question "How does identity dictate life?" based on the project; and
- The inclusion of some visual elements (images, videos, etc.) that add to the presented information.

Most students were required to complete the assessment in class on December 14, 2021. However, this student was given until the end of class on December 17, 2021 to complete the assessment, thereby allowing him three additional school days.

On December 14, 2021, the student received support on this assessment from a classroom paraeducator. The paraeducator pulled the student from the English classroom and took him to another smaller, quiet room (216) where he was seated next to the student. The paraeducator provided the student with a teacher-developed model/example to assist the student in completing the assessment.

On December 15, 2021, the student's special education teacher reviewed the assessment requirements with the student during the student's direct studies course, explaining the instructions and outlining what was needed for each slide. The special education teacher scribed responses for the student and asked him clarifying questions as the student worked on the assessment.

The student was allowed to take 5-minute breaks during the time he worked on the assessment with the paraeducator and the special education teacher.

In completing the assessment, the student was allowed to use his Chromebook which has built-in voice to text capabilities.

The student earned an 89% on his completed final assessment and an overall grade of B in his English class.

On January 5, 2022, a meeting was held to review the student's IEP and to address the concerns raised by the parent in this complaint. In addition to staff members from the student's school, the meeting was attended by the executive director of the special education cooperative, the parent, the student, and the student's grandmother. The executive director told the investigator that, during the meeting, the student acknowledged that he had received assistance from district staff on his English final though he resisted that help at first because he did not think it was fair for him to have someone scribe for him and didn't want to be embarrassed.

Summary and Conclusions

For the semester final assessment in his English class, the student was given 5 response style options from which to choose. The student opted to complete his final using a "Slides" option. Because that option required a shorter written response than some of the other response options, the assessment was not further modified for the student. Had the student chosen the "Essay," "Art Analysis Display," or "Playlist" option, he would have been provided with assessment modifications.

The student was given extended time (three days) to complete the assessment. General education students in the classroom were required to complete the assessment on the same day it was presented.

The student had access to voice to text capabilities on his Chromebook when completing the assessment. On the day that the assessment was first presented to the class, the student was taken by a paraeducator to a separate smaller, quiet location where the paraeducator sat next to the student to break the assessment down page-by-page to talk about what the student needed to do to complete the assessment. The following day, the special education teacher also reviewed the requirements of the assessment, scribing responses and asking clarifying questions. The student was provided with a teacher-made model to assist him with completing the task.

In an IEP team meeting on January 5, 2022, the student acknowledged that he had been provided support in completing his English final. The student earned an 89% on the assessment.

Because the district provided the accommodations specified in his October 6, 2021 IEP, a violation of special education statutes and regulations is not substantiated.

Corrective Action

Information gathered in the course of this investigation has ***not*** identified any areas of noncompliance with special education statutes and regulations. Therefore, no corrective actions are required.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or

others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

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(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #341
ON JANUARY 3, 2022

DATE OF REPORT FEBRUARY 2, 2022

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

The complaint is against USD #341 (Oskaloosa Public Schools) who contracts with Keystone Learning Services to provide special education and related services to students enrolled in USD #341. In the remainder of the report, "USD #341," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE and the district both initially received the complaint on January 3, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on January 6, 2022. A second interview was conducted with the parents on January 17, 2022.

USD #341 made the following school staff available for a telephone interview on January 18, 2022:

- Doug Anderson, Executive Director of Keystone Learning Services
- Amy Conklin, Assistant Director of Special Education for USD #341

- Patrick Foster, Principal of Oskaloosa Elementary School

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parents and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Evaluation Team Report / 3-Year Reevaluation dated February 7, 2020 from USD #453
- Individualized Education Program (IEP) dated February 7, 2020
- Prior Written Notice (PWN) for Identification and Initial Services dated February 7, 2020
- Facsimile dated July 8, 2020 from USD #453 of student's transfer IEP
- WebKIDSS log showing the transfer IEP was uploaded on August 6, 2020
- Paraprofessional Time Sheets for January and February 2021
- Employee Paycheck Report for paraprofessionals for January and February 2021
- Written report for IEP meeting dated January 18, 2021 created by Allison Flinn, Third Grade Teacher
- Excusal from Attendance at IEP Meetings of Required IEP Team Members dated and signed by the father on February 5, 2021
- IEP dated February 5, 2021
- Staffing Notes dated February 5, 2021 written by Tammy Givens, Special Education Teacher
- PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent (PWN) dated February 5, 2021
- IEP Goal Progress Reports dated March 15, 2021
- IEP Goal Progress Reports dated May 25, 2021
- Third Grade Report Card from the 2020-21 school year
- AIMSweb Achievement Data Charts for the 2020-21 school year
- 2020-21 Special Education Staff Schedules
- Professional Staff Training Agenda presented by Keystone Learning Services dated August 4, 2021
- Sign-In Sheet for Certified Staff Inservice held on August 4, 2021 from 8:00 a.m.-3:00 p.m.

- Keystone IEP Requirements showing procedures for annual IEPs, Move-In IEPs, and IEP Amendments
- Email dated August 30, 2021 at 4:36 p.m. written by Mandy Bostwick, Classroom Teacher to the parents
- Email dated August 30, 2021 at 7:02 p.m. written by the mother to Ms. Bostwick
- Email dated August 31, 2021 at 10:26 a.m. written by Ms. Bostwick to the parents
- Email dated August 31, 2021 at 1:25 p.m. written by the mother to Ms. Bostwick
- Email dated August 31, 2021 at 3:25 p.m. written by Ms. Givens to the parents
- Email dated September 1, 2021 at 4:54 p.m. written by the mother to Ms. Givens
- Email dated September 2, 2021 at 2:21 p.m. written by Ms. Givens to the mother
- Email dated September 2, 2021 at 2:44 p.m. written by the mother to Ms. Givens
- Email dated September 2, 2021 at 3:00 p.m. written by Ms. Givens to the mother
- Email dated September 20, 2021 at 4:33 p.m. written by the mother to Ms. Givens
- Email dated September 23, 2021 at 5:49 p.m. written by the mother to Ms. Givens
- Email dated September 24, 2021 at 8:40 a.m. written by Ms. Givens to the mother
- Email dated September 24, 2021 at 8:46 a.m. written by Ms. Givens to the mother
- Email dated September 24, 2021 at 9:09 a.m. written by the mother to Ms. Givens
- Email dated September 24, 2021 at 9:38 a.m. written by Ms. Bostwick to the mother
- Email dated September 24, 2021 at 9:48 a.m. written by the mother to Ms. Givens
- Email dated September 24, 2021 at 12:32 p.m. written by the mother to Ms. Bostwick
- Email dated September 25, 2021 at 9:53 a.m. written by the mother to Patrick Foster, Principal
- Email dated September 26, 2021 at 5:00 p.m. written by Mr. Foster to the mother

- Email dated September 27, 2021 at 4:31 p.m. written by Mr. Foster to the mother
- Phone log dated September 27, 2021 between the father and Amy Conklin, Assistant Director of Special Education
- IEP Update Proposal for the October 1, 2021 IEP Team Meeting written by the parents
- IEP Team Meeting Notes dated October 1, 2021 handwritten by the parents
- IEP Team Meeting Notes dated October 1, 2021 typed by the LEA
- Consent for Release and/or Exchange of Information between Keystone Learning Services and The Guidance Center signed by the parents on October 1, 2021
- Email dated October 15, 2021 at 5:08 p.m. written by the mother to Ms. Conklin
- Email dated October 17, 2021 at 9:01 p.m. written by Ms. Conklin to the mother
- Email dated October 17, 2021 at 2:05 p.m. written by the mother to Ms. Conklin
- IEP Goal Progress Reports dated October 18, 2021
- Email dated October 18, 2021 at 10:53 a.m. written by Ms. Conklin to the mother
- Phone log dated October 18, 2021 at 1:13 p.m. between the mother and Ms. Bostwick
- Notes from Parent Teacher Conference dated October 21, 2021 handwritten by the parents
- Email dated October 27, 2021 at 6:27 p.m. written by Ms. Givens to the parents
- Email dated October 27, 2021 at 6:50 p.m. written by the mother to Ms. Givens
- Email dated October 28, 2021 at 3:08 p.m. written by Ms. Bostwick to the parents
- Email dated October 28, 2021 at 3:38 p.m. written by the father to Ms. Bostwick
- Email dated November 1, 2021 at 3:12 p.m. written by Ms. Bostwick to the parents
- Email dated November 2, 2021 at 12:51p.m. written by the mother and Ms. Bostwick
- Email dated November 4, 2021 at 3:22 p.m. written by Ms. Givens to the parents
- Email dated November 4, 2021 at 3:47 p.m. written by the mother to Ms. Givens
- Email dated November 4, 2021 at 3:49 p.m. written by Ms. Bostwick to the mother

- Email dated November 4, 2021 at 5:26 p.m. written by the mother to Ms. Bostwick
- Email dated November 8, 2021 at 3:14 p.m. written by Ms. Givens to the parents
- Email dated November 8, 2021 at 3:18 p.m. written by the mother to Ms. Givens
- Email dated November 8, 2021 at 3:26 p.m. written by Ms. Givens to the mother
- Email dated November 9, 2021 at 6:51 a.m. written by the mother to Ms. Givens
- Email dated November 10, 2021 at 9:18 a.m. written by Kristen Caffee, School Social Worker, to the mother
- Psychological Assessment from the Guidance Center dated November 14, 2021
- Email dated November 15, 2021 at 2:49 p.m. written by Ms. Bostwick to the parents
- Email dated November 15, 2021 at 2:57 p.m. written by Ms. Givens to the parents
- Email dated November 15, 2021 at 3:21 p.m. written by the mother to Ms. Givens
- Email dated November 16, 2021 at 11:40 a.m. written by Ms. Bostwick to the parents
- Email dated November 23, 2021 at 2:04 p.m. written by Ms. Givens to the parents
- Email dated November 29, 2021 at 8:25 a.m. written by the mother to Mr. Foster
- Email dated November 29, 2021 at 8:44 a.m. written by Ms. Conklin to the mother
- Email dated December 6, 2021 at 8:44 p.m. written by the mother to Ms. Conklin
- Email dated December 7, 2021 at 3:10 p.m. written by the mother to Michaela Driscoll, School Psychologist
- Email dated December 8, 2021 at 11:33 p.m. written by Ms. Conklin to the mother
- Email dated December 8, 2021 at 1:02 p.m. written by the mother to Ms. Conklin
- Phone log dated December 8, 2021 at 1:20 p.m. between Ms. Conklin and the mother
- Email dated December 8, 2021 at 1:40 p.m. written by Ms. Conklin to the mother

- Email dated December 8, 2021 at 6:44 p.m. written by the mother to Ms. Conklin
- Email dated December 9, 2021 at 9:04 a.m. written by the mother to Ms. Conklin
- Email dated December 9, 2021 at 10:16 a.m. written by Ms. Conklin to the mother
- Email dated December 9, 2021 at 10:21 a.m. written by the mother to Ms. Conklin
- Email dated December 13, 2021 at 12:56 p.m. written by Ms. Givens to the parents
- Email dated December 15, 2021 at 9:47 a.m. written by the mother to Ms. Givens
- Email dated December 17, 2021 at 12:50 p.m. written by the mother to Ms. Conklin
- Email dated December 20, 2021 at 8:49 a.m. written by Ms. Conklin to the mother
- Email dated December 20, 2021 at 8:56 a.m. written by Ms. Conklin to Ms. Driscoll
- PWN for Evaluation or Reevaluation and Notice for Consent dated January 3, 2022
- Behavior Data collected between August 27, 2021 and December 15, 2021 for Back-Talking, Refusing to Work, and Not listening/Following directions
- Special Education Timeline 2016 to 2021
- Formal Complaint dated December 31, 2021
- Response to the Allegations dated January 14, 2022
- January 17, 2022 Inservice Agenda and presentation slide titled "IEP Brush-Up"
- Employee Training/Staff Sign-In Sheet dated January 17, 2022
- Emails dated February 1, 2022 at 6:14 a.m. and 6:25 a.m. written by the mother to the Complaint Investigator

Background Information

This investigation involves a nine-year-old male student who is eligible for special education and related services under the exceptionality category of Other Health Impairment based on the most recent reevaluation conducted on February 7, 2020. He initially began receiving special education services in preschool in USD #453 under

the exceptionality category of Developmental Delay for social/emotional skills and received occupational therapy for sensory support. He was reevaluated in 2017 and continued to be eligible for services including a behavior intervention plan (BIP). He transferred to USD #341 in August 2020 and was enrolled in the third grade. He is currently a fourth grade student at Oskaloosa Elementary School where he continues to receive special education services.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)). In this case, only allegations occurring on and after January 3, 2021 will be investigated.

Based upon the written complaint and an interview, the complainant raised four issues that were investigated.

> ISSUE ONE: The USD #341, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the special education and related services required by the Individualized Education Plan (IEP) between January 4, 2021 and February 5, 2021.

Positions of the Parties

The parents reported that the student transferred into USD #341 with an IEP from USD #453 at the beginning of the 2020-21 school year. The IEP from USD #453 was developed on February 7, 2020 and included 60 minutes per day of special education services in the general education setting and 30 minutes per day of special education services in the special education setting as well as a positive behavior intervention plan (BIP) and sensory accommodations.

The parents indicated that the IEP team for the student in USD #341 did not meet until February 5, 2021. They allege that the district failed to follow the appropriate transfer

procedures when the student enrolled at the beginning of 2020-21 school year and failed to provide the services required by the IEP dated February 7, 2020 until a new IEP was developed on February 5, 2021.

USD #341 acknowledge that the student transferred into the district at the beginning of the 2020-21 school year. They reported that the IEP from USD #453 was reviewed by school staff and 60 minutes per day of special education instructional support in the general education classroom was provided to the student.

However, after an internal review, USD #341 acknowledged that 30 minutes per day of specialized instruction to address behavior in the special education setting was not provided as required by the IEP. Doug Anderson, Executive Director of Keystone Learning Services, stated,

> For this oversight, Keystone will offer compensatory services with a counselor/social worker above and beyond any future social work/counselor services deemed necessary by the IEP team. This service could be provided in the summer session to avoid missing core content instruction. We feel the total time needed and how it will be scheduled should be determined by the IEP team.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #341.

USD #341 received copies of the student's IEP and Evaluation Report prior to the start of the 2020-21 school year and these were uploaded into the WebKIDSS system.

There were two IEPs in effect during the 2020-21 school year. The first IEP was developed on February 7, 2020 and the second IEP was developed on February 5, 2021.

The February 7, 2020 IEP required 60 minutes per day of special education instructional support in the general education classroom and 30 minutes per day of specialized instruction in the special education setting to address behavior.

The February 5, 2021 IEP requires 90 minutes per day of special education instructional support in the general education classroom.

The father gave written consent to add 30 minutes of special education instructional support in the general education classroom for a total of 90 minutes per day and to delete 30 minutes per day of specialized instruction in the special education setting as described in the prior written notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent (PWN) dated February 5, 2021.

Staff schedules for the 2020-21 school year reflect that two paraprofessionals, Ashley Cote and Melissa Evans, were assigned to the third grade classrooms between 8:10 a.m. and 3:10 p.m. daily. The schedule specifically notes that these two paraprofessionals are assigned to support the student and four additional students at the beginning of the school day for 20 minutes per day between 8:10 – 8:30 a.m. The schedule shows Ms. Cote was assigned to support the student and one additional student during the reading/spelling instructional block for 80 minutes per day between 8:30 – 9:50 a.m. daily.

The district acknowledged that 30 minutes per day of specialized instruction in the special education setting to address behavior was not provided during the period between Monday, January 4, 2021 and Friday, February 5, 2021.

The school district was in session a total of 24 days between January 4, 2021 and February 5, 2021.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school

district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, interviews and documentation found USD #341 did provide 60 minutes per day of special education instructional support in the general education classroom as required by the February 7, 2020 IEP during the 2020-21 school year. However, USD #341 acknowledged 30 minutes per day of specialized instruction in the special education setting to address behavior was not provided between Monday, January 4, 2021 and Friday, February 5, 2021.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide a total of 12 hours of special education instruction in the special education setting that was required by the February 7, 2020 IEP between the dates of January 4, 2021 and February 5, 2021.

> ISSUE TWO: The USD #341, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to excuse the general education teacher from the February 5, 2021 IEP team meeting.

Positions of the Parties

The parents reported that the IEP team meeting held on February 5, 2021 only included the father; the Oskaloosa Elementary School principal, Patrick Foster; and the special education teacher of the student, Tammy Givens. The parents indicated that the father was told that Allison Flinn, the student's third grade general education teacher was unavailable to attend the IEP team meeting when he inquired about her attendance. The father noted that Ms. Givens asked if he wanted to proceed with the IEP team meeting and he reluctantly agreed because the student had transferred into the district in August 2020 with an IEP and this was the first time the IEP team would be meeting. The parents stated, "Written consent was not requested or provided by either party."

The school district acknowledged that Ms. Flinn did not attend the February 5, 2021 IEP team meeting. However, Ms. Flinn prepared a written report to be shared at the IEP

team meeting and Ms. Givens gave the father the choice to continue or reschedule the meeting. The LEA indicated the father did provide written consent for the excusal of the general education teacher and the IEP team meeting was held as scheduled on February 5, 2021.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #341.

An IEP team meeting was held on February 5, 2021 with the father; the Oskaloosa Elementary School principal, Patrick Foster; and the special education teacher of the student, Tammy Givens, in attendance.

Ms. Finn created a written report on January 18, 2021to be shared with the IEP team. The report indicates the student is passing all of his classes. The only concern noted in the report was that the student "has an attitude, talks back, asks why."

An Excusal from Attendance at IEP Meetings of Required IEP Team Members form documenting Ms. Flinn would be unavailable to attend the February 5, 2021 IEP team meeting was signed by the father on February 5, 2021. The father acknowledged he signed the form.

The Staffing Notes from the February 5, 2021 IEP team meeting indicate the *Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards)* document was offered and accepted by the father at the meeting. The notes state,

> We talked about how well things are going. We removed the behavior part since we are not seeing anything of concern. We are going to work on the social skills needed to interact with student peers. Discussed the in class supports that will be provided and that there will not be any pull out services at this time.

The school district provided the father with a PWN for change of services and a change in placement following the February 5, 2021 IEP team. The father provided written consent for the change of services and change of placement on February 5, 2021.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.321(a)(2) require at least one general education teacher be in attendance at the IEP team meeting. However, federal regulations implementing the IDEA at 34 C.F.R. 300.321(e) allow a required member of the IEP team to be excused in whole or in part from an IEP team meeting if the excused member provides a written report to be considered by the IEP team in advance and the parent agrees in writing to the excusal.

In this case, the student was in Ms. Flinn's general education third grade classroom at the time of the February 5, 2021 IEP team meeting. Documentation showed that Ms. Flinn provided a written report dated January 18, 2021 for consideration by the IEP team. Documentation also showed the father gave written consent for Ms. Flinn to be excused from the IEP team meeting on February 5, 2021.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to follow appropriate procedures to excuse a required IEP team member from the IEP team meeting held on February 5, 2021.

> ISSUE THREE: The USD #341, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for the student on February 5, 2021, specifically by not considering the concerns of the parents and the results of the most recent reevaluation when developing the measurable annual goals designed to meet the student's needs resulting from the student's disability.

Positions of the Parties

The parents reported that the IEP developed on February 5, 2021 did not address their concerns related to the student's need for behavioral services and sensory accommodations. The father indicated that the draft IEP presented at the February 5, 2021 IEP team meeting did not include the same or similar behavioral goals, services, sensory accommodations, or a positive behavior intervention plan (BIP), which were all included in the student's IEP when he transferred into the district in August 2020.

The father reported Ms. Givens told him a reevaluation was done and it was determined the student didn't need those services any longer and further stated, "We're not seeing it." The parents indicated the father questioned Ms. Givens and Mr. Foster if removing goals, services and classroom accommodations would negatively impact the student's education in the general education classroom because of his disability. The father stated that he signed the IEP under protest.

The parents said USD #341 never requested nor were provided with consent to conduct a reevaluation of the student during the 2020-21 school year. The parents also stated that the most recent reevaluation of the student was conducted by USD #453 on February 7, 2020 and the results of that reevaluation were not considered by the IEP team in developing the February 5, 2021 IEP.

USD #341 reported that the father's primary concern was whether the student's medication was effective and whether the student was having positive interactions with his peers. Based on the first-hand experience with the student, the classroom teacher reported the student was displaying appropriate behavior in the classroom at that time and was doing well in school. The IEP team recommended removing the BIP and special education services in the special education setting and increasing special education services in the general education setting to support appropriate interactions with peers. USD #341 provided appropriate PWN for the proposed change of services and placement and the father gave written consent for the proposed changes to the IEP on February 5, 2021.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #341.

The findings of Issue Two are incorporated herein by reference.

The Evaluation Team Report / 3-Year Reevaluation dated February 7, 2020 from USD #453 was conducted when the student was in second grade. The report indicates no concerns with vision, hearing, fine motor, gross motor, speech/language, cognitive, or

academic skills. The student has a medical diagnosis of attention deficit hyperactivity disorder (ADHD) and displays many minor off-task behaviors in the classroom setting.

The results of Behavior Assessment for Children, third edition (BASC-III) found there were no maladaptive behaviors rated as clinically significant; however, there were several areas that fell within the At-Risk range. For maladaptive behaviors, the special education teacher reported the student is sometimes overly aggressive, hits other children, loses his temper too easily, gets back at others, breaks the rules, lies and hurts others on purpose. For adaptive skills, the special education teacher reported the student sometimes has difficulty accepting change in routines, adjusting to new teachers, presenting ideas clearly, accurately describing feelings/emotions, staying organized, and sometimes demonstrates poor study habits.

USD #341 did not conduct a reevaluation of the student during the 2020-21 school year.

The IEP dated February 5, 2021 lists the concerns of the parent as "The main concern that dad has is the student's interactions with his peers. Dad wanted to know if we thought meds were still working."

The IEP dated February 5, 2021 lists the strengths of the child as "The student is a sweet, kind, creative, and quiet boy. He has made friends since he moved here. He has good reading comprehension. He is willing to try and do what is asked of him."

The Social/Emotional section of the IEP dated February 5, 2021 indicates that based on the results of the most recent reevaluation and ongoing data collection, the student does have needs in this area that require special education services. It was noted that the student is willing to do what is asked of him and he tries his best. He is well behaved and not aggressive but appears withdrawn at times.

The needs of the student including parent concerns notes that "Next steps for the student include learning alternate skills and strategies to maintain on-task behavior, such as asking for help when the work feels hard, using ok or I-statements, and staying engaged during non-preferred activities."

His current performance in the classroom setting notes that the student engages in escape-based behaviors such as going to the bathroom, making comments, arguing with the teacher/adults when feeling frustrated and/or not knowing where to start several times per day. The student's difficulty staying focused and engaged during less preferred activities can distract from his learning and the learning of others.

The February 7, 2020 IEP included two goals. The first goal was to increase participation in class by following teacher directions within 30 seconds. The second goal was to increase his ability to keep his hands to himself 100% of the time.

The February 5, 2021 IEP includes one goal. The student will follow adult/teacher directions without protest as evidenced by saying "ok" or using "I-messages" when given an assignment.

The Topics and Discussion section of the Staffing Notes from the February 5, 2021 IEP team meeting indicate,

> We talked about how well things are going. We removed the behavior part since we are not seeing anything of concern. We are going to work on social skills needed to interact with student peers. Discussed the in-class supports that will be provided and that there will not be any pull out services at this time.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a) require school districts to consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the most recent reevaluation of the child, and the academic, developmental and functional needs of the child when developing the student's IEP.

In this case, interviews and documentation show the father attended and provided input into the development of the IEP at the February 5, 2021. The previous IEP included a goal to address increasing class participation by following teacher given

directions and keeping his hands to himself. The IEP team determined 60 minutes per day of special educational support in the general education setting and 30 minutes per day of specialized instruction in behavior in the special education setting were required for the student to meet these annual goals.

The IEP goal proposed and accepted at the IEP meeting on February 5, 2021 also includes a goal for following teacher/adult directives. The goal for keeping hands to himself was deleted because the student was not currently displaying that behavior in the third grade classroom. The IEP team determined that the student no longer required specialized instruction in the special education setting but instead needed more special education instructional support in the general education setting.

It is noted that the student continued to receive 90 minutes per day of special education services and only the location of those services changed to a less restrictive setting following the February 5, 2021 IEP team meeting.

It appears that there is consistency between the February 7, 2020 IEP and the February 5, 2021 IEP with the revisions being based upon current student performance and parent concerns.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to consider the concerns of the parents for enhancing the education of their child and the results of the most recent reevaluation of the child when developing the student's IEP on February 5, 2021.

> ISSUE FOUR: The USD #341, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parents with appropriate prior written notice (PWN) following the October 1, 2021 IEP team meeting.

Positions of the Parties

The parents report they provided a six-page IEP Update Proposal to the IEP team at the October 1, 2021 meeting. The proposal included requests for specific goals and additional special education services as well as a positive behavior intervention support plan (BIP). The parents shared how well the student had done previously in

USD #453 with classroom accommodations, a reward system, and documenting behavioral concerns using the STAR system (Situation, Task, Action, and Response). The parents noted that they "did most of the talking and feedback about problem behavior." The parents reported they were told by Ms. Conklin that it would "take some time to get some information together."

USD #341 reported the October 1, 2021 meeting was scheduled at the parents' request as a problem solving session due to an increase in the student's inappropriate behavior in the fourth grade classroom. The district stated,

> During the meeting a number of requests and suggestions were introduced by the parents and other IEP team members. However, amending the IEP was tabled until current behavior data could be analyzed and the Guidance Center, the Jefferson County Mental Health Center, completed their ongoing evaluation.
>
> Because the team felt that this was an expanded parent-teacher conference and not an "official" IEP meeting, and no changes were subsequently made on the IEP, Keystone did not provide PWN following the meeting. The notes from the meeting taken by Assistant Director Amy Conklin reflect that the discussion was limited to behaviors and interventions, and it was recorded that the, "Team would like to take some time to analyze the data to develop a new plan for the student." The IEP goals were not reviewed and present levels of performance were not discussed.

USD #341 reported that the school staff initially believed the October 1, 2021 meeting served as preparation for an IEP meeting in the near future. However, after conducting an internal investigation into this allegation, USD #341 stated,

> In a review of staff notes and emails all team members refer to all meetings as "IEP meetings" even those that are problem solving or conferences rather than IEP meetings. Therefore, we concede that because there is a misunderstanding of the intent of the meeting in October that a new IEP meeting, now scheduled for January 28, 2022, should be held with notice of meeting and PWN provided. Also, Keystone administrators will review the procedures and associated paperwork required for all parental

requests for IEP meetings at the January 17, 2022 inservice. This information will be shared with all special education staff and future IEPs will be reviewed for compliance with these requirements.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #341.

On September 1, 2021 at 4:54 p.m., the mother sent an email to Ms. Givens indicating the parents would like to have a meeting to discuss changing the students IEP due to behavioral issues occurring in fourth grade. Emails were exchanged between the parents and Ms. Givens on September 2, 20, and 24, 2021 trying to schedule this meeting.

The father called Ms. Conklin on September 27, 2021 and requested an IEP team meeting. The phone log for this call stated,

> He was concerned that the student's IEP from Leavenworth had more supports. He noted that IEP meeting that was held in February 2021 only had himself, Mr. Foster, and Ms. Givens. He asked that the meeting involve the general education teacher, school psychologist, social worker, principal, and special education teacher. He wanted to make sure that we discussed the student's behavior and that he wanted communication from the teacher. His goals were that the student participate and stay in class.

IEP meeting notes from both the parent and school district staff reflect the following persons attended the meeting on October 1, 2021: the father, the mother, and the student; the special education teacher, Ms. Givens; the general education teacher, Ms. Bostwick; the school psychologist, Ms. Driscoll; the school social worker, Ms. Caffee; the principal, Mr. Foster; and the assistant director of special education, Ms. Conklin.

The parents created and shared an IEP Update Proposal document with the other members of the IEP team on October 1, 2021. In this document the parents requested two behavior goals and a positive behavior intervention support plan (BIP) be added to the IEP. In addition, the parents requested adding specialized instruction for

150 minutes per week in the special education setting to address behavior; adding an additional 210 minutes per week of special education instructional support in the general education setting to address positive behavior supports; and adding 10 minutes per month of occupational therapy consult services to sensory accommodations that would enable the student to be more successful in the educational environment.

USD #341 acknowledged that the parents were not provided with a PWN either proposing or refusing the changes in services and placement proposed in the parents' document titled IEP Update Proposal following the IEP team meeting on October 1, 2021. Instead, the district told the parents that the "Team would like to take some time to analyze the data to develop a new plan for the student."

Keystone Learning Services conducted an inservice training with all special education staff on January 17, 2022 to review the procedures and associated paperwork required for when a parent requests and IEP team meeting. Dr. Anderson reported that all IEPs will be reviewed for compliance with these procedures in the future.

USD #341 obtained written consent to reevaluate the student on January 3, 2022. An IEP team meeting was held on January 28, 2022 to review the results of the reevaluation and to review and revise the IEP, as appropriate. The mother reported, "They [USD 341] provided a draft and I presented my questions and I believe we came to a great solution. The reevaluation they did uncovered things I don't think any of us knew about. Apparently, a lot of the behavior is stemming from deficits in executive functioning and math computation."

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) require school districts to provide the parent with PWN a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

In this case, an IEP team meeting was held on October 1, 2021 and the parents made requests for multiple changes to be made to the student's IEP. The district failed to

respond appropriately to each request by either proposing to make the change requested by the parents or refusing to make that requested change and explaining the rationale for the decision in writing.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide the parent with appropriate PWN a reasonable time before the school district proposes or refuses to initiate or change the educational placement, or provision of FAPE to the child during the 2021-22 school year.

It is noted that after an internal review, USD #341 acknowledged this noncompliance and subsequently provided training for staff as well as reevaluated the student and used this data to review and revise the student's IEP.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

   In this case, the IEP in effect between January 4, 2021 and February 5, 2021 was developed on February 7, 2020. That IEP required 60 minutes per day of special education instructional support in the general education classroom and 30 minutes per day of specialized instruction in the special education setting to address behavior. USD #341 provided the 60 minutes per day of special educational instructional support in the general education classroom; however, USD #341 acknowledged the 30 minutes per day of specialized instruction in the special education setting

were not provided on the 24 school days between January 4, 2021 and February 5, 2021.

B. Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) which require school districts to provide the parent with PWN a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

   In this case, an IEP team meeting was held on October 1, 2021 and the parents made requests for multiple changes to be made to the student's IEP. USD #341 failed to respond appropriately to each request by either proposing to make the change requested by the parents or refusing to make that requested change and explaining the rationale for the decision in writing.

Based on the foregoing, USD #341 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #341 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

   a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.323(c)(2) and state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) that require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

   b. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300. 503(a) which require school districts to provide the parent with PWN a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

2. No later than February 28, 2022, USD #341 shall make a written offer of compensatory services to the parent for providing not less than 12 hours of compensatory special education services to address behavior. The offer must include a schedule that would accomplish the completion of all compensatory services prior to the beginning of the 2022-23 school year. USD #341 shall provide a copy of this written offer, including the schedule, to Special Education and Title Services (SETS) on the same day it is provided to the parents. The parents can accept all, part, or none of the compensatory services offered and has 15 school days from the date they receive the offer to notify the district of their decision. Within 15 school days of making this written offer to the parents, USD #341 shall notify SETS, in writing, of the parents' decision regarding the offer of compensatory services. If the parent accepts all or part of the compensatory services offered, USD #341 shall notify the parents and SETS when the compensatory services have been completed.

3. It is noted that USD #341 has already conducted a reevaluation of the student and held an IEP team meeting to review the results and the reevaluation and to review and revise the IEP as appropriate. No later than February 15, 2022, USD #341 will provide SETS with a copy of the IEP developed on January 28, 2022 and a copy of any PWN provided to the parents as a result of that IEP team meeting.

4. It is also noted that Keystone Learning Services has already conducted training on January 17, 2022 with all special education staff to review the procedures and associated paperwork required for instances when a parent requests and IEP team meeting. Dr. Anderson reported that all IEPs will be reviewed for compliance with these procedures in the future. No later than February 15, 2022, USD #341 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #341 will provide SETS with any handouts and/or a copy of the presentation.

5. Further, USD # 341 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #465
ON JANUARY 12, 2022

DATE OF REPORT FEBRUARY 18, 2022

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

The complaint is against USD #465 (Winfield Public Schools who contracts with the Cowley County Special Services Cooperative (CCSSC) to provide special education and related services to students enrolled in USD #465. In the remainder of the report, "USD #465," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on January 12, 2022; however, the original complaint was 29 pages and included 18 allegations. The Complaint Investigator found that several of the allegations did not fall under the state and federal regulations implementing the IDEA and thus she did not have the authority to investigate those allegations and the parents were provided with resources for addressing those allegations. Additional time and research was required to conduct a thorough investigation of the six allegations that did fall under the IDEA, and for this reason, the 30-day timeline to investigate this complaint was extended by seven days and ends on February 18, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on January 21, 2022 and again on February 8, 2022.

USD #465 made the following school staff available for a telephone interview on February 2, 2022:

- Ron Sarnacki, Director of Special Education
- Deana Waltrip, Assistant Director of Special Education
- Jennifer Ray, Principal of Lowell Elementary School
- Christina Allen, Special Education Teacher
- Andrew Brenn, Adaptive Physical Education (APE) Teacher
- Kathleen Marler, Kindergarten Teacher
- Karli Dillon, Speech/Language Pathologist
- Jeff Belden, Occupational Therapist (OT)

The Complaint Investigator also had multiple phone calls with Dr. Sarnacki and Ms. Waltrip between January 18, 2022 and February 14, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. It is noted that the parents and the district both provided numerous documents including emails, work samples, data sheets, and videos related to allegations that were not investigated and, while all of this documentation was reviewed, it was not found to be relevant to the allegations that were investigated. The following materials were used as the basis of the findings and conclusions of the investigation:

- Multidisciplinary Team Report of Reevaluation dated April 13, 2021
- Individualized Education Program (IEP) dated April 13, 2021
- Prior Written Notice (PWN) for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated April 13, 2021
- PWN dated September 2, 2021
- Updated Meeting Invitation for an IEP team meeting on September 9, 2021 at 9:00 a.m.
- Email dated September 9, 2021 at 11:29 a.m. written by Christina Allen, Special Education Teacher to the IEP team members including the parents

- PowerPoint presentation created by the parents for the November 4, 2021 IEP team meeting
- IEP Amendment Between Annual IEP Meetings dated November 10, 2021 provided to the parent on November 10, 2021with handwritten notes from the parent
- PWN dated November 10, 2021 provided to the parent on November 10, 2021
- IEP Amendment Between Annual IEP Meetings dated November 10, 2021 provided to the parent on November 29, 2021with handwritten notes from the parent
- PWN dated November 10, 2021 provided to the parent on November 29, 2021
- IEP Amendment Between Annual IEP Meetings dated November 10, 2021 provided to the parent on December 14, 2021 with handwritten notes from the parent
- PWN dated November 10, 2021 provided to the parent on December 14, 2021
- Weekly Kindergarten Classroom Schedule
- Weekly Paraprofessional Schedule
- The student's Weekly Schedule (two versions showing before and after November 10, 2021 IEP amendment)
- Adaptive Physical Education (APE) Progress Monitoring Form
- Occupational Therapy Medicaid Log
- APE Services Log
- Speech/Language Therapy Services Log
- Meeting notes dated October 14, 2021 and November 4, 2021 written by Jennifer Ray, Principal at Lowell Elementary School
- Meeting Notes from Ron Sarnacki, Director of Special Education dated October 13, 2021
- Parent meeting notes dated November 11, 2021 handwritten by Dr. Sarnacki,
- Observation notes dated November 18, 2021 handwritten by Dr. Sarnacki
- Summary of the November 22, 2021meeting between the parents and Dr. Sarnacki
- Notes from the staffing held on November 29, 2021 between Dr. Sarnacki; Ms. Ray; Christina Allen, Special Education Teacher; and Kathleen Marler, Kindergarten Teacher

- Email dated November 29, 2021 at 11:05 a.m. written by Ms. Allen to the parents
- Email dated December 6, 2021 at 10:06 a.m. written by the mother to Ms. Allen
- Email dated December 7, 2021 at 8:54 a.m. written by Ms. Allen to the parents
- Email dated December 7, 2021 at 9:13 a.m. written by the mother to Ms. Allen
- Email dated December 13, 2021 at 11:15 p.m. written by the mother to Ms. Allen
- Phone log notes dated January 20, 2022 of phone call between the parents and Dr. Sarnacki.
- Kansas State Board of Education Teaching License for Christina Allen
- Summary of paraprofessional training provided by Ms. Allen during the 2021-22 school year dated January 28, 2022
- Tiered Paraeducator Inservice Planning Worksheet for Ashli Wilson
- Tiered Paraeducator Inservice Planning Worksheet for Gabbie Lemon
- Tiered Paraeducator Inservice Planning Worksheet for Marlaina Willett
- Cowley County Special Services Cooperative (CCSSC) Para Educator In-service documentation signed by Ms. Lemon on September 1, 2021
- CCSSC Para Educator In-service documentation signed by Ms. Willett on August 20, 2021
- CCSSC Para Inservice Sign-in Sheet dated August 10, 2021 with signatures from Ms. Wilson, Ms. Willett, and Ms. Lemon
- 2021/2022 CCSSC Para Educator Staff Development Record for Ms. Lemon
- Email dated November 16, 2021 at 9:00 p.m. written by Kylee Brenn, the student's early childhood special education teacher, to the parents, Dr. Sarnacki, and Ms. Allen
- Winfield USD 465 Comprehensive Assessment Plan and Schedule
- The Kindergarten Skills Assessment listing the student's scores on the Quick Phonics Screener (QPS) and the Phonological Assessment Screening Test (PAST) for the 2021-22 school year
- FastBridge Individual Benchmark Report for Early Math
- FastBridge Individual Benchmark Report for Early Reading English
- The student's PAST protocol dated September 20, 2021 and January 7, 2022
- YouTube videos of the student matching letter sounds to pictures, matching words to pictures, copying and naming shapes, and rote counting

- Email exchange dated February 14, 2022 at 10:41 a.m. and 11;58 a.m. between Ms. Marler and Deana Waltrip, Assistant Director of Special Education
- The student's PowerSchool Attendance Record for the 2021-22 school year
- The Discipline Log Reports for the 2021-22 school year
- USD #465 Notice to Parents of Short-term Suspension dated November 10, 2021
- The student's PowerSchool Discipline and Contact Log for the 2021-21 and 2021-22 school years
- Email dated September 29, 2021 at 7:55 a.m. written by Ms. Marler to Ms. Ray; Ms. Allen; Gabbie Lemon, one-to-one paraprofessional for the student; Beth Lundgren, classroom paraprofessional; and Peggy Staubs, classroom aide
- Response to the allegations written by Ms. Ray
- Three photos showing bite marks dated September 22, September 28, and October 13, 2021
- Email dated October 13, 2021at 9:54 a.m. written by Ms. Ray to the mother
- Email dated October 15, 2021 at 11:08 a.m. written by Ms. Allen to the mother
- Behavior Major Office Referral dated December 17, 2021 at 11:45 a.m.
- Email dated December 17, 2021 at 11:59 p.m. written by the mother to Kerrie Bryant, Lead Teacher during the incident that happened on that date
- Email dated December 21, 2021 at 9:37 a.m. written by Ms. Bryant to the mother
- Technical Assistance Recommendations from Observations on January 7 and January 27, 2022 from the Kansas Technical Assistance System Network (TASN)
- Screenshots of text messages dated August 25, 2021 and December 2, 2021 between the mother and Ms. Allen
- Formal Complaint filed by the parents on January 12, 2022
- Response to the allegations dated January 31, 2022written by Ms. Waltrip
- Response to additional questions dated February 15, 2022 written by Ms. Waltrip

Background Information

This investigation involves a 6-year-old male student who is eligible for special education and related services under the exceptionality category of Developmental Delay (DD). The student lives with his parents who were both born and educated in a

foreign country. The parents speak both in English and the foreign language in the home.

The student received early intervention services through the Individuals with Disabilities Education Act (IDEA) Part C Birth to Age Three program in Kansas. He was initially evaluated and found eligible for special education prior to age three and transitioned to the IDEA Early Childhood Special Education program in USD #465 upon his third birthday to receive special education and related services at the Winfield Early Childhood Center.

He was reevaluated on April 13, 2021 and found to continue to be eligible for special education and related services under the eligibility category of Developmental Disability when he transitioned into the IDEA Part B School Age program during the 2021-22 school year. The student is currently enrolled in kindergarten at Lowell Elementary School in USD #465 and receives special education and related services through an IEP.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised six issues that were investigated.

> ISSUE ONE: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures during the 2021-22 school year.

Positions of the Parties

The parents believe the student is being punished for behaviors associated with his disability at Lowell Elementary School in USD #465. They reported the student will use his behavior to communicate with others because of his speech/language delays. They indicated that the student has received both out-of-school suspensions (OSS) as well

as in-school-suspensions (ISS) for physical aggression towards his peers and school staff.

The parents were upset that the student received OSS despite the fact that the student was calm when they arrived to pick him up on November 10, 2021. The parents were also upset in December when the emergency medical services and ambulance came to the school along with the police as result of an incident that happened at recess. The parents have requested the district conduct a functional behavioral assessment (FBA) to develop a positive behavior intervention plan (BIP)to address these behaviors at school since the September 9, 2021 IEP team meeting.

The district acknowledged that the student has received five office referrals related to physical aggression towards peers and school staff since his enrollment in kindergarten during the 2021-22 school year. USD #465 staff reported the student has only been assigned to one half day of OSS and one day of ISS during the 2021-22 school year. School district staff also reported that a Safety Plan was developed at the end of September and a functional behavior assessment is being conducted at this time. The district believes it has followed the disciplinary procedures required by the IDEA in regards to this student.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #465.

The first office referral occurred on September 22, 2021 in the kindergarten classroom. The student did not want to clean up following a learning lab activity. He became agitated and bit a peer on the back of his leg leaving deep marks in the skin without punctures. School staff reported and documentation show there was no disciplinary consequences as a result of this act of physical aggression and that a safety plan was developed.

The second office referral occurred on September 28, 2021 in the kindergarten classroom. The student did not want to sit on the carpet during calendar time. He became upset and agitated and bit a different peer on the upper thigh leaving visible teeth marks and bruising. Again, the student did not receive any disciplinary

consequences as a result of this incident. Instead, the school staff explored proactively adding sensory input into the student's daily routine.

The third incident occurred on October 13, 2021 in the special education classroom when the student entered and found a peer near his desk. He bit this student's arm and was assigned an ISS in the special education classroom for the remainder of the school day.

The fourth incident occurred on November 10, 2021 in the kindergarten classroom. The student became angry when he was told they could not go outside for recess due to the rain. The student screamed and kicked his paraprofessional multiple times. He fell to the ground and began spitting at the adults. The spit was approximately the size of a quarter and landed on the school staff as well as the floor. In addition, the student spread spit onto his face, arms, and clothing. The student was assigned one half day of OSS due the health and safety concerns resulting from this behavior even though he had calmed down when the parents arrived to pick him up from school.

The fifth incident occurred on December 17, 2021 during the recess following lunch. The student was playing red light / green light with his peers. One student stopped running during a green light and the student began to choke this student aggressively. His paraprofessional intervened and separated the two students. The school nurse reported the other student's neck was very red following this incident. The student calmed down using sensory strategies and continued with his school day with an accommodation of a separate recess from his peers.

School staff reported emergency medical staff in an ambulance and police arrived at the school later that same afternoon as a result of the other's student's parent's concern for her health and safety.

The parent and school staff both acknowledge that a reevaluation is currently being conducted for an FBA as the first step in the development of a BIP.

Applicable Regulations and Conclusions

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.

In this case, the student received one day of ISS on October 13, 2021, which was served in the special education classroom with no loss of specialized instruction or related services. In addition, the student was assigned to one half day of OSS on November 10, 2021 as a result of a disciplinary incident that occurred during the 2021-22 school year.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to follow appropriate disciplinary procedures during the 2021-22 school year.

> ISSUE TWO: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately certificated and trained special education staff, specifically the special education teacher and paraprofessionals, to provide the special education services to the student during the 2021-22 school year.

Positions of the Parties

The parents report many concerns related to the competence of the special education teacher and paraprofessionals in USD #465 who work with the student. The parents indicated that the special education teacher is not always truthful with the information she shares with the parents. For example, the special education teacher told the parents the student attended a balloon party in the kindergarten classroom from 3:00 until 3:15 p.m. on December 10, 2021. However, the student was not included in the video on the kindergarten Facebook page and according the general education schedule, the student was not in the classroom between 3:00 until 3:15 p.m. The parent stated:

> Ms. Allen was not saying the truth. Therefore the student did miss the balloon party. When parents showed the class video to the student, he

> loved it and wanted to watch again and again. This clearly showed that our child missed an opportunity to socially interact with other kids. Can Ms. Allen [special education teacher] or Ms. Gabbie [one-to-one paraprofessional] replace or provide that experience for the student again?

The parents also indicated that Ms. Allen was not able to perform her professional duties as the special education teacher efficiently or effectively. For example, they complained that the IEP and PWN sent home following the November 4, 2021 IEP team meeting was not accurate and contained many errors that had to be changed before they could provide written consent.

In addition, the parent indicated Susan Rush, Parent Educator in USD #465, observed the student on November 3, 202. The report included the statement:

> This child had many more transitions in environment today that he could adapt to and as the day went on he became more violent in his protests. One of the issue with the schedule is that it is time based. Several times, just as he was making progress or engaging, it was time to leave while the other children stayed.

The parents noted, "She clearly stated the student struggles with the schedule created by Ms. Allen." The parent concluded that this shows, "her lack of ability to design the best schedule that fits well for a child considering his needs, supporting his education and social emotional development."

The parent also expressed concerns that the paraprofessionals working with the student are not appropriately trained. They understood that Ms. Allen was supposed to train Gabbie Lemon, the one-to-one paraprofessionals assigned to work with the student during September, October, and November of the 2021-22 school year. However, the parents indicated they are unsure if this training was ever provided because Ms. Allen told the parents in a meeting on December 15, 2021 that "Ms. Gabbie is a very nice person but she doesn't have the training".

The parents noted they were also told that Kylee Brenn, the student's early childhood special education teacher at the Winfield Early Learning Center during the 2020-21 school year, was supposed to train the new paraprofessional, Marlaina Willett, Ms.

Lemon as well as Ms. Allen on November 17, 2021; however this training was postponed and has not yet been provided.

USD #465 reported that all school staff assigned to work with the student are appropriately certificated and trained according to the standards set by the KSDE. The district indicated:

> All classified staff receives a one-day training provided at the COOP office by the Director of Special Education and the Para Facilitator when they are originally hired. This training covers basic information for paras to know when working with Special education students. They also get 90 minutes of training on CHAMPS [CHAMPS. stands for Conversation (which level voice the students may use during the task), Help (how students signal for help during a task), Activity (what is the task or objective), Movement (how much movement the students are allowed within the classroom is permitted during the activity), Participation (what students do or sound like that demonstrates they are participating), and Successful students (the end result when a student follows the program)] to help with Behavior and visual schedule introduction and 15 minutes of Emergency Safety Intervention Training. In addition, all paras in this classroom have completed the 20-hour requirement of Professional development for the year. The current para is also trained in MANDT [evidenced-based training designed to promote prevention, de-escalation and intervention approaches] and we had attempted to train other new staff, but they quit prior to the training. In addition to this training, Ms. Allen has provided training for the para specific to the student and his needs, and so has the instructional coach Katie Frankie.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #465.

There were three IEPs in effect during the 2021-22 school year. The annual IEP was developed on April 13, 2021 and then amended on September 2, 2021 and again following an IEP team meeting on November 4, 2021. Both the parents and school

staff acknowledge that none of the IEPs include any specialized training for school personnel.

The district's website shows two special education teachers are assigned to Lowell Elementary School. Ms. Allen is listed as the "Interrelated Teacher" while Katie Griffin is listed as the "3-5 IRC Teacher."

Deana Waltrip, Assistant Director of Special Education for the CCSSC, stated the acronym describing Ms. Griffin's position means "third through fifth grade interrelated classroom teacher." She reported that Ms. Allen would be considered the "K-2 IRC Teacher" using this same acronym pattern. Ms. Waltrip indicated she was unsure why the two teachers have different job titles on the website but indicated that each member district participating in the special education cooperative are responsible for how the staff are listed on their district's website.

Ms. Allen was issued a teaching license from the Kansas State Board of Education on August 6, 2019 allowing her to teach general education for grades kindergarten through sixth grade and to teach special education for high incidence students in preschool through third grade. Her teaching license will expire on June 21, 2025.

The student has had two paraprofessionals assigned to support him for the majority of the 2021-22 school year. It is noted that Ashli Wilson was initially assigned to work with the students at the beginning of the 2021-22 school year but that she quit after a couple of weeks to take another job. Gabbie Lemon was then assigned to be the student's paraprofessional until Marlaina Willett transferred to that position on December 1, 2021. Currently Ms. Willett is with the student providing one-to-one support throughout the school day except for lunch when Ms. Lemon provides support to the student. School staff reported that Ms. Allen is responsible for the student before school when the paraprofessionals have not yet started their contracted school day.

Ms. Lemon was originally hired at USD #465 on September 15, 2020. Documentation shows she received the CCSSC Para Educator Inservice Training on September 1, 2021. Her 2021/2022 CCSSC Para Educator Staff Development Record shows that she has attended 20.25 hours of inservice training during the current school year.

Ms. Willett was originally hired at USD #465 on March 9, 2021. Documentation shows she received the CCSSC Para Educator Inservice Training on August 20, 2021. Her 2021/2022 CCSSC Para Educator Staff Development Record shows that she has attended 23 hours of inservice training during the current school year.

Ms. Allen reported that she provided student specific training on the visual schedule, structured work systems, de-escalation strategies, and data collection to all three of the paraprofessionals assigned to work with the student during the 2021-22 school year.

Ms. Waltrip explained that the original date for the training with the student's previous early childhood special education teacher, Kylee Brenn, was cancelled in November because of Covid concerns. Ms. Waltrip indicated she is unsure if that training will be rescheduled since consultants from the Kansas Technical Assistance System Network (TASN) are now involved with the student and his IEP team.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.156 require each state education agency (SEA) to establish and maintain qualifications to ensure that personnel necessary to provide special education and related services in accordance with the IEP are appropriately and adequately prepared and trained.

The KSDE details personnel qualifications in the 2021-22 Special Education Reimbursement Guide State for Categorical Aid. Per the *Special Teacher Reimbursement Licensing Requirements* chart in Appendix C, a Licensed Personnel Report for High Incidence Special Education is required for the teacher of an interrelated program.

In this case, Ms. Allen is assigned as the interrelated classroom teacher for grades kindergarten through third grade at Lowell Elementary School in USD #465. She holds a current teaching license issued by the Kansas State Board of Education allowing her to teach special education for high incidence students in

preschool through third grade. Based upon that information Ms. Allen meets the KSDE requirements to be the teacher of an interrelated program.

Per the *Tiered Paraeducator Inservice Planning Worksheet* in Appendix F of the 2021-22 Special Education Reimbursement Guide State for Categorical Aid, paraprofessionals who have not worked more than three years as a paraprofessional are required to obtain 20 hours of inservice training during the current school year of employment. It is noted that new hires during the current school year would require a pro-rated number of hours of inservice training based on the date of hire.

In this case, all three of the paraprofessionals assigned to work with the student received student specific training from the special education teacher on the visual schedule, structured work systems, de-escalation strategies, and data collection.

Ms. Lemon and Ms. Willett were each hired at USD #465 less than three years ago and each of them has documented more than the required 20 hours of inservice training during the current school year. Based upon that information Ms. Lemon and Ms. Willett meet the KSDE requirements to be considered appropriately and adequately trained paraprofessionals.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide appropriately certificated and trained special education staff, specifically the special education teacher and paraprofessionals, to provide the special education services to the student during the 2021-22 school year because Ms. Allen, Ms. Willett and Ms. Lemon all meet the SEA requirements to be considered appropriately and adequately prepared and trained.

> ISSUE THREE: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically participation in district-wide assessments, during the 2021-22 school year.

Positions of the Parties

The parents reported that Ms. Allen told them that the student was not capable of the skills required to take the Phonological Assessment Screening Test (PAST). However, upon their request, Kathleen Marler, the kindergarten classroom teacher, provided the parents with examples of the skills necessary to be assessed and the parents worked with the student at home to learn these skills. The parents have videos showing the student demonstrating the skills needed to participate in the PAST type of assessments.

The parents stated:

> As a special education teacher, Ms. Allen should be aware that every autistic child is differently able and autism is a spectrum. Therefore, parents believe that Ms. Allen does not have the right to assume the student's capabilities without trying. By law, students are supposed to participate in the district-wide assessments with accommodations agreed upon on his IEP. The student should be assessed as other kids. If the teachers communicate with parents about the format and nature of the assessment ahead of time, parents can work on it at home. Then it will be easy for the student to complete his tasks at school.

USD #465 noted that the student's IEPs state that he will participate in district assessments such as the PAST and the Quick Phonics Screening (QPS) in addition to the FastBridge Reading and Math Assessments, which combines Computer Adaptive Tests (CAT) and Curriculum-Based Measures (CBM) to screen students for early reading delays and/or dyslexia as well as early math delays, identify skill gaps, and offering proven recommendations for reading/math instruction and diagnostic reading/math interventions. The district indicated that the student has participated in the same district-wide assessments as his kindergarten peers during the 2021-22 school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #465.

The findings of Issue Two are incorporated herein by reference.

According to the *Winfield USD 465 Comprehensive Assessment Plan and Schedule*, their assessment plan includes four steps: universal screeners, informal diagnostic assessments, progress monitoring of interventions, and formal diagnostic processes and assessments. School staff stated that all students participate in universal screeners but only students who are determined to be "at-risk" participate in the informal diagnostic assessments and progress monitoring of interventions and that only the "at-risk" students who do not make progress through the use of interventions receive formal diagnostic processes and assessments.

The universal screener for reading and math for grades kindergarten through eighth grade is the FastBridge assessments, which is to be administered to all students in September, January, and April each school year.

The FastBridge, QPS and the PAST are listed as informal diagnostic assessments for reading for selected students in kindergarten through twelfth grade while the FastBridge is the informal diagnostic assessment for math for selected students in kindergarten through twelfth grade. Informal diagnostic assessments are scheduled to be administered in September, January, and April each school year.

The FastBridge assessments for both reading and math are also the progress monitoring measures for selected students in grades kindergarten through twelfth grade.

Regardless of the district's written assessment plan, both the parents and school staff acknowledge that all three IEPs require the student to participate in the following district-wide assessments: PAST, FastBridge, and QPS. The IEP requires the following accommodations on these district-wide assessments: fidgets, frequent breaks, separate setting, and preferential seating.

Individual FastBridge Math and Reading Benchmark Reports for the student show he took these assessments in both the fall and winter of school years 2020-21 and again during the 2021-22 school year.

The student's records also show the student was informally assessed using the QPS assessments in both the fall (September) and winter (January) of the 2021-22 school year. In addition, the student's records show the PAST was administered on September 20, 2021 and January 7, 2022.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(6)(i) require school districts to develop an IEP for a student with a disability that includes a statement of any individual appropriate accommodations that are necessary to measure the academic and functional performance of the child on state- and district-wide assessments.

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

In this case, even though the PAST and QPS are listed as "informal diagnostic assessments" in the district's assessment plan, all of the student's IEPs include a statement listing the accommodations to be provided during district-wide assessments and specifically name the PAST, FastBridge, and QPS as those district-wide assessments. Interviews and documentation show the student participated in the PAST, FastBridge, and QPS in both the fall and winter as required by the *Winfield USD 465 Comprehensive Assessment Plan and Schedule*

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to implement the student's IEP, specifically the requirement that the student participate in district-wide assessments, during the 2021-22 school year.

> ISSUE FOUR: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to

provide the parents with appropriate prior written notice (PWN)) during the 2021-22 school year.

Positions of the Parties

The parents reported that an IEP team meeting was held on November 4, 2021 when they presented a 12-slide PowerPoint of questions and recommendations to be included in the student's IEP including a request for a functional behavioral analysis (FBA) and the creation of a behavior intervention plan (BIP). The parents indicated that Ms. Allen provided them with an incomplete and inaccurate copy of the IEP amendment and PWN on November 10, 2021. The parents refused to provide written consent until both of the documents were accurate. After multiple requests for changes, the mother gave her written consent for the proposed material changes in services and substantial change of placement on December 15, 2021.

USD #465 reported that the student's IEP was amended and PWN provided to the parents twice during the 2021-22 school year. The first amendment was a result of an IEP team meeting held on September 2, 2021. It was the determination of that meeting to add an additional speech/language goal to address the use of a picture exchange system (PECS) to increase communication skills. This was not a material change of services or a substantial change of placement so parent consent was not required.

The second amendment was a result of an IEP team meeting held on November 4, 2021to discuss the parent's questions and recommendations contained in a PowerPoint presentation. A draft IEP amendment with an implementation date of November 11, 2021 and PWN were provided to the parent on November 10, 2021; however, the parents were not in agreement with the proposed IEP amendment and requested changes be made. School staff worked with the parents to incorporate their requested changes into the IEP amendment and PWN. These documents were provided again on November 29, 2021; however, the parents were still not in agreement with the proposed changes. School staff noted that the final copy of the IEP amendment and PWN dated November 10, 2021 proposing a reduction of special education instruction in the special education setting and increasing the special education support in the general education setting, updated speech/language goals,

and adding swimming as an adaptive physical education (APE) service as well as numerous accommodations was provided to the parent via email on December 14, 2021 and written consent for the proposed changes was obtained on December 15, 2021.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #465.

The annual IEP was reviewed and revised at IEP team meeting held on April 13, 2021. As a result of that meeting, the parents were provided with PWN dated April 13, 2021 for a material change of services and a substantial change of placement. The PWN shows both parents agreed to these changes virtually on that same date and that the mother sent an email dated April 13, 2021 at 12:20 p.m. providing the written consent.

The April 13, 2021 IEP was amended at an IEP team meeting held on September 9, 2021, which was rescheduled from September 2, 2021. At this meeting, school staff proposed adding additional special education instruction in the special education setting to the student's IEP; however, the parents did not agree with that recommendation. After meeting, the parents were provided with PWN dated September 2, 2021 proposing to add an additional speech/language goal to address the use of PECS to increase communication skills. School staff reported the change was implemented but that the written consent for the change was not provided by the mother until October 12, 2021.

On November 4, 2021, the IEP team met again to discuss amending the student's IEP dated April 13, 2021 and amended on September 2, 2021. The parents shared a PowerPoint presentation which included a request for an FBA and a BIP. Following that meeting, an IEP amendment and PWN were created by Ms. Allen and provided to the parents on November 10, 2021. The PWN did not address the parent's request for an FBA and a BIP.

The parents were not in agreement with IEP amendment and PWN provided and requested additional changes be made. It was noted that the parents made multiple

requests for changes to be made to the IEP amendment and multiple additional IEP amendments and PWNs were provided to the parent. Ms. Allen stated:

> Amendment was written following a team meeting called by parents on 11/4/21 asking for the changes reflected in this amendment. Amendment was sent to parents to sign on 11/10/21. A follow up email was sent on 11/15/21 about the forms. At this time, parents sent a request on items to be added to the amendment. This adjusted amendment was sent via email on 11/29 for review prior to sending a printed copy home on 12/09. On 12/14, parents requested additional changes to the amendment. These changes were made and the new amendment was hand delivered to parents on 12/15 during a team meeting, as well as emailed on 12/14/21.

Karli Dillon, Speech-Language Pathologist, indicated she had a phone conference with the parents on November 18, 2021 to discuss change his speech/language goals. She reported that the student had met the PECS goal which was added as a result of the September 9, 2021 IEP meeting and recommended adding goals for answering Blanks level questions and receptive language (i.e. following 2-step directions). The IEP amendments and PWN provided to the parents on November 29, 2021 and again on December 14, 2021 both include the four proposed measureable speech/language goals. However, neither of these PWNs addressed the parents request for an FBA and BIP.

In addition to the updated speech/language goals and several accommodations, the November 29, 2021 and the December 14, 2021 versions of the PWN included four proposed actions that would ultimately result in a material change of services and a substantial change of placement as noted below:

1. A reduction in special education services within the special education classroom from 60 minutes to 25 minutes 4 days per week and 55 minutes 1 day per week.
2. An increase of special education minutes within the general education classroom of 25 minutes per day to equal 400 minutes 1 day per week, 315 minutes 3 days per week, and 370 minutes 1 day per week of inclusion services (inclusion services will be provided by a 1:1 para), 5 days a week for assistance in social/emotional development.

3. The student will attend swimming/rec center one time per week for 60 minutes at Ark City high school [sic] as swimming permits. Services will be provided by the APE.
4. Transportation services provided to and from Ark City high school [sic] for 30 minutes 1 day per week.

All versions of the PWN documents are dated November 10, 2021 and note the reason for the proposed change in services and placement are due to request of the parents and that the change in the speech/language goals was due to student progress towards his current IEP goals.

The PWN that the parent signed on December 15, 2021 includes a handwritten parent note and correction. The document states, "On Wednesday, November 10, 2021, we met to review . . ." and the parents noted, "IEP team met on November 4."

School staff noted that they began implementing the proposed changes following the provision of each of the versions of the IEP amendment and the PWN to the parents because the parents were requesting these changes be made.

Documentation shows a total of three versions of the IEP amendment and PWN that were all dated November 10, 2021 were created by Ms. Allen based on requests and recommendations for edits made by the parent following the IEP team meeting held on November 4, 2021. School staff noted that they began implementing the proposed changes following the provision of each of the versions of the IEP amendment and the PWN to the parents on November 10 and 29, 2021 and on December 14, 2021 because the parents were requesting these changes be made even though written consent was not obtained for the material change of services and substantial change of placement until December 15, 2021.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the

provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

State regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. "Material change in services" is defined at K.A.R. 91-40-1(mm) as an increase or decrease of 25% or more of the frequency or duration of a special education service, related service, or supplementary aid or service specified in the child's IEP. "Substantial change in placement" is defined at K.A.R. 91-40-1(sss) as the movement of an exceptional child for more than 25% 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.

Federal regulations, at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting. The changes may be made by the entire IEP Team at an IEP Team Meeting. Or the changes may be made without a meeting if the parent of a child with a disability and the school district representative both agree not to convene an IEP Team Meeting for the purposes of making the agreed upon changes and instead develop a written document to amend or modify the child's current IEP. In either case, the PWN requirements in 34 C.F.R. 300.503(a) and K.A.R. 91-40-27(a)(3) must be met.

The August 15, 2008 Letter to Heidi Atkins-Lieberman from the Office of Special Education Programs (OSEP) provides guidance for when PWN must be provided. The letter clarifies whether the provision of a free appropriate public education (FAPE) refers to only the provision of the type/amount/location of the special education and related services or if a change in an IEP goal is also considered to be a "provision of FAPE." OSEP's response states:

> Under 34 C.F.R. 300.17(d), FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of federal regulation at 34 C.F.R. 300,320 through 300.324. Therefore, a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of the special

education and related services being provided to a child, would trigger notice under 34 C.F.R. 300.503.

In this case, interviews and documentation found USD #465 amended the student's IEP on two occasions during the 2021-22 school year. The first time was on September 9, 2021 when an additional speech/language goal was added to the IEP. This was not a new goal area requiring the addition or change to the special education or related services in the student's IEP and, as a result, did not result in a material change of services or a substantial change of placement. Therefore, no PWN was required to be provided to the parents for this change. However, USD #465 provided the parents with a PWN dated September 2, 2021 and the mother's written consent for this change was not obtained until October 12, 2021; however, the change in the speech/language goal was implemented following the IEP team meeting.

The second IEP amendment and PWN were the result of the November 4, 2021 IEP team meeting where the parents presented a PowerPoint to the team with questions and recommendations for changes to the IEP. As a result of that IEP team meeting, an IEP amendment and PWN was created by Ms. Allen and provided to the parents on November 10, 2021. Interviews and documentation show the parents made multiple requests for changes to be made to this IEP amendment and PWN which resulted in Ms. Allen creating two additional IEP amendments and two additional PWNs that were then provided to the parents on November 29, 2021 and December 14, 2021.

The mother provided written consent for the material change in services and substantial change of placement by signing the third version of the PWN on December 15, 2021. However, USD #465 acknowledged that they began implementing the parents' requested changes prior to receiving the written consent from the parents.

It is noted that even though consent was not required, the PWN dated September 2, 2021 was not signed by the parent until October 12, 2021 giving the impression that parent consent was necessary for the proposed change to take effect. All versions of the IEP amendments and PWNs dated November 10, 2021 included proposals for both changes that do not require parent consent such as changing the speech/language IEP goals as well as changes to the amount and location of special education services that

would be considered a material change of services and a substantial change of placement. By including all of these on the same PWN, it gives the impression to the parent that all of the proposed changes cannot take effect until USD #465 has obtained the parent's written consent.

USD #465 also failed to respond to the parents' request for an FBA and development of a BIP made at the November 4, 2021 IEP team meeting by either agreeing to conduct the FBA and develop a BIP, if appropriate, or provide PWN refusing the parents' request and explaining the rationale.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide the parents with appropriate prior written notice (PWN) during the 2021-22 school year.

> ISSUE FIVE: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically specialized instruction, one-to-one paraprofessional support, adaptive PE services, and accommodation related to crayons, alphabet letters, and cell phones during the 2021-22 school year

Positions of the Parties

The parents complain that USD #465 has removed the student from the general education setting more than the student's IEP allows since his enrollment in kindergarten. The parent provided a listing of multiple dates where the student was placed in the special education classroom for more than the 60 minutes per day required by both the April 13, 2021 IEP and the September 2, 2021 amendment to the April 13, 2021IEP. The parents also reported multiple dates the student received more than the required 25 minutes per day of the special education services in the special education classroom following the November 4, 2021 IEP team meeting.

The parents shared multiple dates and situations to show USD #465 did not provide the student with the one-to-one paraprofessional support or the swimming activity during his weekly adaptive PE class as required by the IEP. In addition, the parents

reported they have talked to staff on numerous occasions about classroom accommodations for limiting or stopping his access to crayons, alphabet letters, and cell phones to decrease his repetitive behaviors related to these items; however, school staff continue make these items available to the student in the classroom.

USD #465 reports they have provided the services required by the student's IEP throughout the 2021-22 school year. The staff indicated they have made multiple changes to the student's IEP based on the parents' requests and recommendations this school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #465.

The findings of Issue Four are incorporated herein by reference.

At the beginning of the 2021-22 school year, the student was supposed to be provided a total of 60 minutes per day of specialized instruction in the special education setting, 15 minutes per week of APE, and 1,735 minutes per week of one-to-one paraprofessional support in the general education setting.

The parents reported that an IEP meeting was held on September 9, 2021 where Ms. Allen proposed a schedule that would have the student placed in the special education classroom for a total of 210 minutes per day. The parents did not agree to this recommendation and wanted the student in the special education classroom for only the 60 minutes per day required by the current IEP so that the student would have more opportunities for academics and social interaction in the general education classroom.

The parents requested another IEP team meeting which was held on November 4, 2021. At that meeting, the parents shared a PowerPoint presentations with questions and recommendations related to reducing the amount of time in the special education setting, adding additional special education support in the general education setting, adding additional APE minutes, and multiple accommodations related to crayons, alphabet letters, and use of the cell phone.

As a result of that meeting, the parents were provided with an IEP amendment and PWN on November 10, 2021 that included some but not all of the changes discussed at the November 4, 2021 IEP team meeting. The parents disagreed with the IEP amendment and refused to sign the PWN.

On November 18, 2021, the parents and Ms. Dillon held a phone conference and agreed to amend the student's IEP by changing the speech/language goals because the student had made progress and mastered the current PECS goal. These changes were added to the second version of the IEP amendment and PWN provided to the parents on November29, 2021 but dated November 10, 2021.

Between November 15, 2021 and November 29, 2021, the parents had multiple conversations with multiple different staff in USD #465 and all of these agreed upon changes were incorporated into a second version of an IEP amendment and PWN which was provided to the parents on November 29, 2021. However, the parent once again disagreed with the IEP amendment and refused to sign the PWN.

Ms. Allen incorporated the additional information requested by the parents into the IEP amendment and PWN and provided a third version to the parents on December 14, 2021 proposing to change the services in the special education setting to 25 minutes four days per week and 55 minutes one day per week and the special education support minutes within the general education classroom to equal 400 minutes one day per week, 315 minutes three days per week, and 370 minutes one day per week for assistance in social/emotional development. In addition, 45 minutes per week of APE was added for swimming and the recreation center activity along with 30 minutes per week of transportation as a related service to access the APE services for swimming/rec center. The mother granted written consent to start these services on December 15, 2021.

The district believes the statements included in the IEP amendment and PWN agreed to by the parent on December 15, 2021 regarding the alphabet letters and cell phones are clarifications and not accommodations. In regards to alphabet letters, the IEP amendment states:

> Teachers working with the student will only allow the use of alphabet letters when other students are using them as part of the curriculum and not as a play activity. Other activities to keep his mind active when there is wait time within the classroom.

In regards to cell phones, the IEP amendment states:

> Parents have requested that technology only be used at times that other students are using screens. In a case where other strategies (fidgets, books, visuals, or preferred activities) have been used in an attempt to assist the student in self-regulation and are unsuccessful, technology can be used as a very last resort and should be discontinued as quickly as possible.

The district acknowledged that the IEP amendment and PWN agreed to by the parent on December 15, 2021 mistakenly did not include the clarification regarding crayons requested by the parents. The district proposes the following:

> The district proposes to reconvene the IEP team, write a PWN, and add the following statement to the IEP, "Also, the use of crayons will be carefully monitored (i.e., use of one crayon at a time, putting the crayon back in the box, and then getting another crayon)."

The district acknowledged that the special education and APE services provided in both the special education setting and general education setting were materially changed resulting in a substantial change in the student's placement following the November 4, 2021 IEP team meeting based upon that parents' requests even though written consent for these changes was not obtained until December 15, 2021.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school

district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the IEP in effect between August 23, 2021 and December 15, 2021 was developed at an IEP team meeting held on April 13, 2021 and amended at an IEP team meeting held on September 9, 2021. These IEPs required a total of 60 minutes per day of specialized instruction in the special education setting, 15 minutes per week of APE, and 1,735 minutes per week of one-to-one paraprofessional support in the general education setting. These IEPs do not include any mention of alphabet letters or cell phones. The district acknowledged the parents requested a material change in services and a substantial change of placement at the November 4, 2021 IEP team meeting and that those requested changes were implemented prior to obtaining the written consent from the parents on December 15, 2021.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing implement the student's Individualized Education Plan (IEP), specifically specialized instruction, one-to-one paraprofessional support, and adaptive PE services during the 2021-22 school year.

> ISSUE SIX: The USD #465, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parents with a copy of the Individualized Education Plan (IEP) in a timely manner during the 2021-22 school year.

Positions of the Parties

The parents allege that USD #465 did not provide them with a correct copy of the IEP developed at the November 4, 2021 IEP team meeting until December 14, 2021. The parents report that the first copy was sent home on November 10, 2021 but it did not accurately reflect the decisions made at the IEP team meeting so we had to communicate numerous times to get Ms. Allen to make the corrections. The mother indicated she finally received a corrected final copy of the IEP amendment via email on December 14, 2021.

USD #465 reported that the IEP team initially met on November 4, 2021 to review the parents' PowerPoint presentation of questions and recommendations for the student's

IEP. Following that meeting, Ms. Allen prepared an IEP amendment reflecting the decisions made at the IEP team meeting and this was provided to the parents on November 10, 2021. The parents were not in agreement with the IEP amendment as written and contacted Ms. Allen on November 15, 2021 with recommendations for updates.

On November 18, 2021, a phone conference was held between the parents and Karli Dillon, the speech/language pathologist, and additional speech/language goals were proposed as the student had mastered the PECS goals.

Multiple school staff continued to be in contact with the parents for their recommendations and Ms. Allen made all necessary changes and provided the parent with another copy of the November 10, 2021 IEP amendment on November 29, 2021. However, the parents were still not in agreement with the changes and updates and shared additional changes and recommendations for updates on December 14, 2021. Ms. Allen made those changes as well and provided the parents with a copy of the final IEP amendment via email on December 14, 2021 and in-person on December 15, 2021.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #465.

The findings of Issues Four and Five are incorporated herein by reference.

Ms. Allen created three versions of the IEP amendment dated November 10, 2021 based on parent requests. The first version was provided on November 10, 2021 but the parents returned the IEP amendment on November 15, 2021 with recommendations for changes.

Ms. Dillon and the parents discussed updating the speech/language goals in a phone conference on November 18, 2021 because the student had mastered the PECS goals added following the September 9, 2021 IEP team meeting. The parents were in agreement with this change to the IEP. The parents were provided with an IEP

amendment and PWN dated November 10, 2021 incorporating these additional speech/language goals on November 29, 2021 and again on December 14, 2021

Ms. Allen and the parents continued to discuss accommodations such as the use of the alphabet letters and clarifying the transportation for the swimming activity. All of these changes were incorporated into the second version of the IEP amendment and the parents were provided with another copy of the IEP amendment dated November 10, 2021 on November 29, 2021.

However, the parents were still not in agreement with the changes and updates and shared additional changes and recommendations for updates on December 14, 2021. Ms. Allen made those changes as well and provided the parents with a copy of the third and final version of the IEP amendment dated November 10, 2021 via email on December 14, 2021 and provided another copy in-person on December 15, 2021.

USD #465 acknowledged that this IEP amendment and PWN did not include the information about the use of crayons in the classroom.

The district reported that their practice is to provide the parents with a copy of the final IEP within a reasonable amount of time following the IEP team meeting, usually no more than 10 days after the meeting date.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.322(f) and State regulations at K.A.R. 91-40-18(d) require that parents be provided with a final copy of the IEP at no cost.

Federal regulations, at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting. The changes may be made by the entire IEP Team at an IEP Team Meeting. Or the changes may be made without a meeting if the parent of a child with a disability and the school district representative both agree not to convene an IEP Team Meeting for the purposes of making the agreed upon changes and instead develop a written document to amend or modify the child's current IEP.

In this case, the IEP team meeting was held on November 4, 2021 and the parent was provided with a copy of the resulting IEP amendment on November 10, 2022. However, the parents were not in agreement with this version of the IEP amendment.

The parents and various school staff subsequently had multiple contacts and the IEP amendment was actually amended on November 18, 2021 in the phone conference between the parents and the speech/language pathologist when they agreed to add the additional speech/language goals. However, an IEP amendment describing these changes agreed upon on November 18, 2021 was not provided to the parent; instead, these changes were incorporated in the IEP amendment and PWNs dated November 10, 2021 and provided to the parents on November 29, 2021 and again on December 14, 2021.

Ms. Allen and the parents continued to be in contact to discuss recommendations to be added to the IEP amendment. On November 29, 2021, Ms. Allen provided a second copy of an IEP amendment with all of these changes as well as the speech/language goal updates incorporated; however, this IEP amendment continued to be dated November 10, 2021. But again, the parents were not in agreement with this second version of the IEP amendment.

The parent pointed out that the IEP amendment was dated November 10, 2021 even though the IEP team meeting where the amendment was discussed was held on November 4, 2021. Ms. Allen explained the discrepancy in the dates in an email dated November 29, 2021 as follows:

> At the meeting on the 4th, we discussed the changes that were requested to be made on the IEP. At this time, you requested to have an amendment written. Since it was not written on the 4th prior to the meeting and your request, I cannot use the 4th date as a starting date as the amendment has to written prior and signed by parents prior to it being able to begin. I write the amendment and got I sent home by the 10th (4 school days after the formal request for an amendment was made), with this amendment set to begin on the 11th. This is the reason for the date reflected.

The parents continued to provide Ms. Allen with recommendations and clarifications to the November 29, 2021 version of the IEP amendment. Ms. Allen again incorporated these changes into an IEP amendment and provided a third version of an IEP

amendment dated November 10, 2021 to the parents via email on December 14, 2021. The parents were in agreement with this third and final version of the IEP amendment and provided written consent for the material change in services and substantial change of placement described in accompanying PWN on December 15, 2021.

Based upon the foregoing, it appears that the April 13, 2021 IEP was amended at an IEP team meeting held on September 9, 2021 but the date of the amendment is documented as September 2, 2021. It also appears that the September 2, 2021 amendment to the April 13, 2021 IEP was amended again on November 18, 2021 without an IEP team meeting when the parents and Ms. Dillon, the school district representative, agreed to the new speech/language goals. The parents received an IEP amendment incorporating these changes on November 29, 2021 in an IEP amendment and PWN dated November 10, 2021.

The student's IEP was amended again on December 14, 2021 without an IEP team meeting when the parents and Ms. Allen, the school district representative, agreed upon the changes to be made as described in the third version of the IEP amendment. All of the previous versions of the documents titled IEP Amendment including the original version dated November 10, 2021 resulting from the IEP team meeting held on November 4, 2021 were never agreed upon by the parents and thus did not meet the requirements to be an IEP amendment.

The parents were provided a copy of the third and final version of the IEP amendment via email on December 14, 2021, which is the same date the parents and Ms. Allen, the school district representative, agreed to amend the student's IEP without holding an IEP team meeting. Therefore the parents did receive a copy of the IEP within a reasonable amount of time following the final decision to amend the student's IEP.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide the parent with a copy of the IEP at no cost. However, a violation of special education statutes and regulations was substantiated for failing to follow the appropriate procedures to amend the student's IEP during the 2021-22 school year.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300.503(a) that require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability and state regulations at K.A.R. 91-40-27(a)(3) that require school districts to obtain parent consent before making a material change in services or a substantial change in placement.

In this case, USD #465 proposed to amend the student's IEP at the parents' request through an IEP team meeting held on November 4, 2021. Several, but not all, of the proposed actions would result in a material change of services and a substantial change of placement so the parents were provided with PWN on November 10, 2021 requesting written consent for the proposed changes to be implemented on November 11, 2021. However, the parents were not in agreement with the PWN and refused to grant written consent until it had been updated to reflect all the changes discussed at the IEP team meeting. USD #465 provided the parent with two additional versions of the PWN dated November 10, 2021 and the parent finally gave written consent for the proposed changes described in the PWN on December 15, 2021; however, USD #465 began implementing the material change is services and the substantial change of placement on November 11, 2021.

It is also noted that even though consent was not required, USD #465 provided the parent with a PWN dated September 2, 2021 giving the impression that the parent consent was necessary for the proposed change to take effect.

Finally, USD #465 failed to appropriately respond to the parents' request for an FBA and BIP following the November 4, 2021 IEP team meeting.

B. Federal regulations at 34 C.F.R. 300. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in

accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the IEP in effect between August 23, 2021 and December 15, 2021 was developed at an IEP team meeting held on April 13, 2021 and amended at an IEP team meeting held on September 9, 2021. These IEPs required a total of 60 minutes per day of specialized instruction in the special education setting, 15 minutes per week of APE, and 1,735 minutes per week of one-to-one paraprofessional support in the general education setting. The district acknowledged the parents requested a material change in services and a substantial change of placement at the November 4, 2021 IEP team meeting and that those requested changes were implemented prior to obtaining the written consent from the parents on December 15, 2021.

C. Federal regulations, at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), which allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting. The changes may be made by the entire IEP Team at an IEP Team Meeting. Or the changes may be made without a meeting if the parent of a child with a disability and the school district representative both agree not to convene an IEP Team Meeting for the purposes of making the agreed upon changes and instead develop a written document to amend or modify the child's current IEP.

In this case, the parents and the school district staff held an IEP team meeting on November 4, 2021 to discuss amending the current IEP but the parents were not in agreement with the proposed changes. Multiple contacts with multiple school staff were made, but the parent continued to disagree with the proposed IEP amendments. Finally, the parents and Ms. Allen, the school district representative agreed to the third and final version of the IEP amendment on December 14, 2021 but that document continued to be mislabeled as occurring on November 10, 2021 causing confusion for all parties.

Based on the foregoing, USD #465 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #465 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

    a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.503(a) that require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability and state regulations at K.A.R. 91-40-27(a)(3) that require school districts to obtain parent consent before making a material change in services or a substantial change in placement.

    b. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.323(c)(2) and state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) that require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

    c. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), which allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting.

2. No later than March 18, 2022, USD #465 will reconvene the IEP team as proposed by USD #465 to address the parent's request regarding crayons. USD #465 will provide the parent and SETS with a copy of the resulting IEP or IEP amendment and any appropriate prior written notice provided to the parent within 10 business days following the IEP team meeting.

3. It is noted that noncompliance was identified for not responding to the parents' request for an FBA and BIP at the November 4, 2021 IEP team meeting. It is noted that USD #465 is currently working with TASN to conduct the FBA and provide technical assistance to the student's IEP team for developing a BIP. For this reason, no individual corrective action is ordered at this time.

4. It is noted that noncompliance was identified for providing the special education and related services because the USD #465 implemented a material change in services and substantial change of placement following the November 4, 2021prior to obtaining written consent from the parent. However, the parents clearly thought this change was to take place immediately following the IEP team meeting because one of their allegations was that the district was not implementing the IEP. For this reason, no compensatory services are ordered as a corrective action; however, USD #465 shall reconvene the IEP team meeting to review and revise the IEP and then provide the parents with appropriate PWN for any changes in services compared to the September 2, 2021 amendment to the April 13, 2021the IEP and obtain written consent, if appropriate. USD #465 will provide the parent and SETS with a copy of the resulting IEP or IEP amendment and any appropriate prior written notice provided to the parent within 10 business days following the IEP team meeting.

5. No later than March 30, 2022, USD #465 will arrange for TASN to conduct a training for all licensed and certificated special education staff and administrators working at Lowell Elementary School regarding the IDEA requirements related to amending an IEP as well as when and how to provide appropriate PWN. No later than April 15, 2022, USD #465 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #465 will provide SETS with any handouts and/or a copy of the presentation.

6. No later than April 15, 2022, USD #465 shall arrange with Families Together to conduct parent training regarding the special education process including the development and revision of IEPs as well when and how PWN must be provided. This training will be made available to all parents of students with disabilities at Lowell Elementary School. USD #465 shall provide SETS with the name and

credentials of the person providing this training along with copies of training materials as well as a sign-in sheet documenting the persons who participated in the training no later than April 30, 2022.

7. Further, USD # 465 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290
ON JANUARY 20, 2022

DATE OF REPORT: FEBRUARY 22, 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on February 1, 2022. On February 3, 2022, the investigator spoke by telephone with Dr. Joshua Robinson, Assistant Superintendent/Director of Special Education for the district.

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

- Materials submitted by the parent in the formal complaint received by the Kansas State Department of Education (KSDE) on January 20, 2022 which included the following:
    - Notice of Meeting dated October 27, 2021 regarding a meeting on November 10, 2021 at 9:30 AM
    - Notice of Meeting dated October 27, 2021 regarding a meeting on November 10, 2021 at 9:00 AM
    - Staffing Record dated November 11, 2021
    - Notice of Meeting dated November 10, 2021 regarding a meeting on December 6, 2021 at 7:35 AM
    - Second Notice of Meeting dated November 10, 2021 regarding a meeting on December 6, 2021

    - Third Notice of Meeting dated November 10, 2021 regarding a meeting on December 6, 2021
    - Notice of Meeting dated December 7, 2021
    - Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 6, 2021 (partial form)
    - Second Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 6, 2021
    - Email dated November 29, 2021 from the assistant director of special education to the student's parents
    - Email dated December 1, 2021 from the assistant director of special education to the parent
    - Email dated December 1, 2021 from the parent to the assistant director of special education
    - Email dated December 3, 2021 from the assistant director of special education to the parent
    - Email exchange dated December 3, 2021 between the parent and the assistant director of special education
    - Consent for Electronic Communication (blank form)
    - Email exchange dated May 12, 2021 between the director of special education and the parent
    - Email dated May 13, 2021 from the director of special education to the parent
- Consent for Electronic Communication dated February 22, 2021
- Email dated January 20, 2022 from the parent to the assistant director of special education
- Meeting Agenda dated December 6, 2021
- Staffing Record dated December 6, 2021

Background Information

This investigation involves a ten-year-old boy who is enrolled in the fourth grade in his neighborhood school. The student was diagnosed by Children's Mercy Hospital with Tourette Syndrome at the end of Kindergarten after having initially been determined to have a transient tic. Diagnoses of Anxiety, Attention Deficit Hyperactivity Disorder (ADHD), and Developmental Dyslexia were subsequently identified. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

Issues

In her written complaint, the parent presented four issues.

Issue One: The district has failed to provide notice at least 10 days prior to multiple meetings.

Applicable Statutes and Regulations

Parents are to be provided an opportunity to participate in eligibility determination and IEP meetings. Schools must provide a notice of these meetings at least 10 calendar days prior to the meeting date (K.A.R. 91-40-17(2)). The notice must indicate the purpose, time, and location of the meeting and the titles or positions of the persons who will attend on behalf of the agency (K.A.R. 90-40-17 (2)(b)(1)).

Parent's Position

It is the position of the parent that she was given less than 10 calendar days' notice prior to two meetings when the district made changes in the time, location, and/or participants for these meetings and was given less than 10 calendar days' notice of two additional meetings,

District's Position

It is the position of the district that the parent was provided with notice of two of these meetings well in advance of 10 calendar days. The district asserts that amendments were subsequently sent to the parent in order to ensure transparency when changes were made.

With regard to the third meeting specified by the parent, the district contends that meeting was scheduled with less than 10 calendar days' notice in order to accommodate the parent's request that the meeting be expedited.

Investigative Findings

On October 27, 2021, the district mailed both parents notice of a meeting to be held on November 10, 2021 at 9:30 AM at the student's school for the purpose of reviewing the results of an independent evaluation to determine whether the student needed "special education services and/or supplementary aids in order to receive FAPE [free appropriate public education]." The parent signed the form on October 30, 2021, checking a box to indicate that she planned to attend the meeting as scheduled.

A second notice regarding the meeting on November 10, 2021 was mailed to the parent on November 4, 2021, less than 10 days prior to the meeting. This notice stated that the meeting would be held at 9:00 AM instead of 9:30 AM. The parent signed that document on November 7, 2021 but did not indicate that she planned to attend. The parent also did not indicate that she consented to waive her right to a 10-day prior written notice of the meeting,

The parent was present for the November 10, 2021 meeting.

On November 23, 2021, the district mailed the parent notice of a meeting to be held on December 6, 2021 at 7:35 AM at the student's school. According to the notice, participants would include – among others – the "School Social Worker" and the "School OT [Occupational Therapist]." The notice form stated that the meeting was to be held "to develop the individualized education program [IEP]."

A second notice of the 7:35 AM meeting on December 6, 2021 was mailed to the parent on November 29, 2021, less than 10 days prior to the meeting. This notice indicated that among other participants a "KASB Attorney" would be in attendance as would the school social worker. The "School OT" was dropped from the list of attendees. According to the notice, the meeting was to be held "to develop the individualized education program [IEP]" for the student. The parent did sign the form but did not consent to waive her right to a 10-day prior written notice of the meeting.

On December 1, 2021 – less than 10 days prior to the scheduled meeting – the district mailed the parent notice of the December 6, 2021 meeting which stated that the meeting would be held not only for the purpose of developing an IEP for the student but also to "review the evaluation and determine eligibility." This notice also stated that the school social worker, the OT, a KASB attorney, and an SLP (Speech/Language Pathologist) not previously listed would be present. The parent did not sign this notice to indicate her consent to waive her right to 10-day prior written notice of the meeting.

On December 1, 2021, the parent sent an email to the assistant director of special education indicating that the parent's advocate would be attending the meeting. The assistant director responded via email stating

> With additional people, I think we have outgrown our space at [the student's school] and need a bigger meeting location. We are going to change the location to the Board of Education office conference room where we can spread out just a little. I have notified our team today of the change. Please confirm with me that you will be at the Board of Education office as our new meeting location.

The parent replied to the assistant director on December 3, 2021 stating

> Since the district moved the meeting to a new location, the sudden shift in meeting location has meant that I cannot begin until I am able to drop off the children at [the student's school]. This will be around 7:45.

On December 5, 2021, the assistant director sent the parent an email stating

> Dropping the kids off first is no problem. The small delay to the start will just mean that our team will be ready to go and we can get technology up and working. We will just see you…as soon as you can get there.

A fourth notice of the December 6, 2021 meeting was hand delivered to the parent on December 6, 2021. This notice reflected the change in location for the meeting to the Board of Education office. No other changes from the December 1, 2021 iteration of the notice were included. The parent did not sign the form to indicate that she was willing to consent to waive her 10-day prior written notice of the meeting.

The parent was present for the December 6, 2021 meeting. At that meeting, the parent requested that the scheduling of a subsequent meeting to finalize an IEP for the student be expedited, and the team agreed to reconvene as soon as both parents were available.

On December 6, 2021, the district hand delivered the parent notice of a meeting to be held at the Board of Education Office on December 8, 2021 at 8:00 AM, less than 10 days after the notice was sent. The meeting was to be for the purpose of developing the IEP for the student. Among others, attendees would include the social worker, OT, and KASB attorney. The parent did not sign this notice. Because of a scheduling conflict on the part of the parents, this meeting was rescheduled for December 16, 2021.

The district mailed the parent notice of the December 16, 2021 meeting on December 8, 2021 – less than 10 days prior to the meeting. The parent did not provide her written consent to waive her right to 10 days' notice. She did attend the meeting.

Summary and Conclusions

Special education statutes and regulations do not permit addendums or modifications to meeting notices. If any of the required elements of meeting notice are changed after appropriate notice is provided to the parent, a new, complete notice is required and must be given to the parents 10 calendar days prior to the proposed meeting date.

A parent may want to waive the right to 10-day notice and allow the scheduling of a meeting to be expedited. However, if the parent does not consent to waive that right, the 10-day requirement must be met, and the meeting must be scheduled for a date that allows for 10-day prior notice.

The district initially provided the parent with more than 10-day notice regarding meetings on November 10 and December 6, 2021. However, changes were subsequently made to the times, locations, and/or purposes of these meetings. While the district provided notice to the parent of each of these changes, these subsequent notices were not provided 10 days prior to the dates of the meetings, and the parent did not waive her right to the 10-day notice for any of these meetings.

The meeting initially proposed for December 8, 2021 was rescheduled due to a scheduling conflict, but the parent was not given 10-day notice of the new meeting date and did not waive her right to that notice.

The district's failure to provide 10-day notice of meetings did not prevent the parent from participating as she did attend all of the meetings that are the subject of this issue. However, the parent was not provided 10-day prior notice of three meetings which included all required information regarding those meetings and did not consent to waive her right to that notice. A violation of special education statutes and regulations is substantiated on this issue.

Issue Two: The district did not make reasonable efforts to ensure that the parents understood the purpose of a meeting on December 6, 2021.

Applicable Statutes and Regulations

Schools must provide parents with a notice of meetings at least 10 calendar days prior to the meeting date (K.A.R. 91-40-17(2)). As noted above under Issue One, the written notice must indicate the purpose of the meeting (K.A.R. 90-40-17 (2)(b)(1)).

Parent's Position

It is the position of the parent that the student's eligibility for special education services was established in a meeting on November 10, 2021. The parent asserts that she was given notice of a meeting scheduled for December 6, 2021 to be held for the purpose of developing an IEP for the student. The parent contends that prior to December 6, 2021 the district changed the purpose of the meeting from IEP development to a continued discussion of the student's eligibility for special education services.

District's Position

While acknowledging that the purpose of the December 6, 2021 meeting did change between the time the first notice of that meeting was sent to the parent on November 23, 2021 and the date the third notice related to that meeting was sent to the parent on December 1, 2021, the district asserts that meeting notices and additional email communication articulated the intended purpose of the December 6, 2021 meeting.

Investigative Findings

On November 23, 2021, the district mailed the parent notice of a meeting to be held on December 6, 2021. The notice form stated that the meeting was to be held "to develop the individualized education program [IEP]."

A second notice of the meeting on December 6, 2021 was mailed to the parent on November 29, 2021. According to the notice, the meeting was to be held "to develop the individualized education program [IEP]" for the student.

At 7:35 AM on December 1, 2021, the parent sent an email to the assistant director of special education asking – among other things – when a draft of the IEP would be sent to the parents. The assistant director of special education responded to the parent stating that it was anticipated that a draft IEP would be sent to the parent "late this afternoon or tomorrow morning."

As the meeting date approached, the special education teacher had been developing a draft IEP document for the team to review. The special education teacher expressed to both the school psychologist and the assistant director that she felt that more information was needed in order to complete sections of the draft related to the student's social/emotional needs as well as services and accommodations.

At 4:22 PM on December 1, 2021, the assistant director sent an email to the parent stating

> I wanted to give you an update about the upcoming meeting. We have been gathering present levels of performance for (the student) for the team to discuss, and we have been trying to put together an addendum to the original eligibility report that encapsulates our conversation from the last time and also attempts to answer the qualifying questions for eligibility. There are still parts of eligibility the team has not discussed and eligibility has not been determined. We also have not signed any documents yet for eligibility. Eligibility is the first step in the process and will be the focus of our Monday (December 6, 2021) meeting. While (the special education teacher) has gathered present levels, there will not be an IEP to review until the team determines eligibility and completes that process. Since eligibility paperwork will be discussed and signed, we will also invite…the speech pathologist to the meeting.

> An agenda for Monday's meeting has been attached to this email.

According to the agenda, seven topics would be discussed.

- Purpose of the meeting;
- parent concerns;
- brief review of IEE (independent educational evaluation) from the previous meeting;
- discussion of present levels of performance in the area of social/emotional needs;
- discussion of present levels of performance in reading, math, and written language;
- discussion of eligibility questions (exceptionality and need); and
- final eligibility determination.

On December 2, 2021, the parent sent an email to the assistant director stating,

> We object to revisiting the issue of Eligibility for Special Education for [the student]. As the LEA Rep at that meeting, you are on record as confirming that [the student] *is* eligible for Special Education. After extensive discussion, as well as repeated efforts by our Advocate to refer to and apply the Eligibility Indicators from the KSDE Handbook, when asked one by one, 8 of the 10 members of the team did say they were in favor of qualifying [the student] for Special Education Eligibility. At that point, as the LEA Rep, you confirmed that determination…
>
> The team then went on to discuss areas of concern to be addressed in the next meeting at which the IEP would be addressed, and the discussion focused on his ability to compose a written paragraph, and at what point an intervention would begin…

On December 3, 2021, the assistant director sent the parent an email stating

> I appreciate your viewpoint and I understand your frustration. Through our gathering of present levels, there is simply not enough feedback from the team yet to complete the eligibility report. We are particularly interested in discussing the social emotional section and whether he might qualify for any services in that area. Discussing the

> social/emotional aspect of [the student's] testing and present levels needs to be an item of discussion before we move forward in the process.

The parent responded via email on December 3, 2021 stating

> As far as extending any discussion about eligibility, we are more than happy to consider adding an additional area of eligibility relevant to [the student's] Social-Emotional levels.
>
> However, the team at the 4-hour Eligibility Meeting on November 19, 2021, determined [the student's] eligibility under the Eligibility Indicators for Specific Learning Disability, with needs demonstrated in Reading and Writing. We are not willing to consent to exiting him from that eligibility and expect that regardless of any other determination we may add, we will be working as a team on Monday morning to develop an appropriately ambitious IEP with services, supports, and accommodations relative to [the student's] already determined eligibility.

A third notice of the meeting on December 6, 2021 was mailed to the parent on December 1, 2021. According to this notice, the meeting was "to review the evaluation and determine eligibility" as well as "to develop the individualized education program [IEP]."

The staffing record from the December 6, 2021 meeting shows that the team addressed each of the topics specified in the agenda that was emailed to the parent on December 1, 2021 with the exception of the student's performance in reading, math, and written language. That discussion was deferred at the request of the parent advocate to allow the team to answer the question of the student's eligibility for special education services.

Summary and Conclusions

The district provided the parent with notice of a meeting to be held on December 6, 2021 for the purpose of developing an IEP for the student. However, as school staff prepared for the meeting, a need for additional discussion of the student's social/emotional needs surfaced. The district contacted the parent via email to let her know that the purpose of the meeting would be expanded to include a discussion of the student's eligibility for services

in areas related to his social/emotional needs. The district included a meeting agenda with the email message. A notice of meeting which reflected the meeting's expanded purpose was subsequently sent to the parent.

In an email to the district, the parent objected to further discussion of the student's eligibility if that discussion led to "exiting" the student from eligibility in areas she felt had been established in a previous meeting, but agreed to a discussion of eligibility in areas related to his social/emotional needs.

The staffing record from the meeting of December 6, 2021 shows that the team addressed the topics outlined in an agenda sent to the parent prior to the meeting.

While the parent did not agree with the district's decision to alter the purpose of the December 6, 2021 meeting, email communications between the district and the parent show that she had been informed of the change and the reasoning behind that change. A violation of special education statutes and regulations is not substantiated on this issue.

Issue Three: The district made eligibility decisions regarding the student without the participation of the parents and included individuals in the decision-making process who were not part of the evaluation team.

Applicable Statutes and Regulations

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.

The required members of an IEP team are specifically identified and described in state and federal statutes and regulations (K.S.A. 72-3404). Other parties may participate in an IEP team meeting including those who are invited by the parent or the school. The determination of who has knowledge or special expertise regarding the child is made by the party (parents or school) who invited the

person to be a part of the team. Therefore, the other party may not bring into question the expertise of an individual to be a member of the team and may not exclude another team member based upon the quality of their expertise (K.A.R. 91-40-17(j) and 34 C.F.R 300.321(c)).

The presence of an attorney at a team meeting is generally discouraged as it often sets an adversarial tone for the meeting. However, the participation of an attorney is not prohibited by special education statues and regulations. An attorney may attend a team meeting if the parents or school officials believe an attorney is needed. If the attorney is coming at the invitation of the school, they must be included on the notice of meeting provided to the parents (34 C.F.R. 300.322(b)(1)(i)).

Parent's Position

The parent contends that the special education director attempted to negate the evaluation team's decision regarding the student's eligibility and need for special education by continuing the eligibility discussion at the December 6, 2021 meeting rather than allowing the team to move forward with the development of an IEP for the student.

The parent asserts that the inclusion of a KASB attorney in the meeting led her to believe that the district had made the decision not to provide services to the student and was attempting to "exit the child even before the IEP was developed." It is the position of the parent that in securing the approval for the attorney's participation in the meeting, individuals who were not a part of the evaluation team were involved in the decision-making process and in an attempt to impede parent participation.

District's Position

The district asserts that no educational decisions regarding the student were made without parent participation. The district contends that the KASB attorney was invited to the meeting at the request of the school team because of her knowledge of special education law – a frequent topic of discussion in previous meetings. While the participation of the attorney did require approval from the district superintendent, no decisions regarding services to the student were made outside of the team process in which the parent participated.

Investigative Findings

In a telephone conversation with the investigator on February 1, 2022, the parent stated that she could not provide specific evidence to support her assertion.

According to the district, questions about legal issues had arisen in all team meetings regarding the student's eligibility beginning in the Spring of 2021. Staff members who had participated in those meetings expressed concern to the school psychologist and assistant director regarding how best to respond to those questions. The assistant director approached the director of special education about the possibility of including an attorney as a member of the school team to provide guidance should legal issues again become a topic of discussion.

The district stipulates that a meeting took place involving the director and assistant director of special education and the district superintendent. According to the district, the approval of the superintendent was required in order for the counsel to participate in upcoming meetings. No discussion of the student's eligibility occurred during this meeting.

The district provided the parent with written notice that the attorney would be attending team meetings on December 6 and 16, 2021.

Summary and Conclusions

The inclusion of an attorney in a team meeting at the invitation of a school district is not prohibited by special education statutes and regulations. The director and assistant superintendent sought and received permission for the attorney's participation from the superintendent as required by district policy. No evidence was presented to suggest that any decisions regarding services to the student were made during this meeting. A violation of special education statutes and regulations is not substantiated on this issue.

Issue Four: The district transmitted confidential information regarding the student without first obtaining the consent of the parent.

Applicable Statutes and Regulations

Confidentiality of education 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. The federal regulations relating to FERPA are available at https://www2.ed.gov/policy/gen/reg/ferpa/index.html as well as at https://www.ksde.org/Default.aspx?tabid=337. In addition, Kansas Special Education Regulations at K.A.R. 91-40-50 have adopted by reference provisions in 34 C.F.R. 300.612 through 300.624, regarding parental access to education records and confidentiality of those records.

Unless it has parent consent, or a FERPA exception applies, a district must prevent the disclosure to any unauthorized person of personally identifiable information from student records. Disclosure is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

FERPA allows the school to release records to the parent of a student who qualifies as a dependent under section 152 of the Internal Revenue Service Code (34 C.F.R. 99.31(a)(8)) without first obtaining parental consent.

The Family Policy Compliance Office (FPCO) * is the division of the United States Department of Education responsible for investigating and enforcing complaints from parents and eligible students relating to their rights under FERPA. In Letter re: St. Tammany Parish School Board (September 15, 2004), the FPCO acknowledged FERPA does not mandate the use of any specific method of transmission of student records. Schools are expected to "take appropriate steps consistent with current technological development to control access." FPCO states that schools "should" use regular mail for the transmission of records but does not specifically prohibit electronic transmission of records so long as the district takes "reasonable steps to protect information in a student's educational record from unauthorized access or improper disclosure."

*The FPCO is currently the Student Privacy Policy Office (SPPO).

Position of the Parent

The parent contends that by electronically transmitting the student's records to her without her consent in May of 2021, the district exposed confidential student information to potential disclosure to a third party.

Position of the District

It is the position of the district that the parent had provided written consent for the electronic communication of confidential information in February 2021 and did not revoke that consent until January of 2022. The district contends that the parent and school staff had communicated frequently via email, and the district had no reason to believe that messages sent to the email address provided by the parent were going to anyone other than the parent.

Investigative Findings

The parent states that she did not provide written consent to the district for the electronic transfer of confidential information regarding the student until December of 2021. However, the district states that it is standard practice to request the consent of the parent for the electronic transmission of confidential information as a part of the initial evaluation process. Therefore, when the student was referred by the parent for initial evaluation in February of 2021, the district requested and obtained the parent's written consent for the electronic transmission of confidential information on February 22, 2021.

According to a form entitled "Consent for Electronic Communication"

> My signature below represents my consent for district staff to communicate confidential information regarding my student's special education services via electronic means. I understand that the district is not responsible for security outside of the district network and the district may not be able to guarantee confidentiality once information leaves the district system. This consent remains in effect until revoked.

On January 20, 2022, the parent sent an email to the assistant director of special education stating

> [the student's father] and I revoke our consent for electronic communications regarding confidential information. As LEA, please provide notification of your receipt of this notification as of 1/20/22.

The district stipulates that confidential student information was electronically transmitted to the parent in May of 2021 after receipt of a request from the parent for copies of the student's educational records. The district states that

the information was sent to the parent at an email address provided by the parent which had been used frequently for communication between the parent and the district. At no time prior to the time the student records were sent to the parent in May 2021 had the parent raised concerns regarding the security of her email account.

The parent acknowledges that she received the information sent to her by the district in May of 2021 and does not assert that any disclosure to an outside party occurred at the time the information was sent.

The parent states that the electronic records were still in her email inbox at the time she was notified by her internet provider in the Fall of 2021 that her account could have been hacked. While the internet provider provided no proof that the account had actually been hacked, the parent was encouraged to take steps to ensure the privacy of her account. No evidence of actual disclosure of confidential student information was provided to the investigator by the parent.

Summary and Conclusions

Parental consent is not required for a district to release confidential student information to a parent. Neither FERPA nor special education statutes and regulations specifically prohibit the electronic transmission of educational records. At the time the district electronically transmitted student educational records to the parent in May of 2021, the parent had provided her written consent for that action. No evidence of actual disclosure of confidential information to a third party was provided by the parent. A violation of special education statutes and regulations is **not** substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on one of the issues presented in this complaint. Specifically, a violation was substantiated with regard to K.A.R. 91-40-17(a)(2) which requires that parents be given written notice of eligibility and IEP team meetings regarding their child at least 10 calendar days prior to the meeting date. That notice must indicate the purpose, time, and location of the meeting and the titles or positions of the persons who will attend on behalf of the agency (K.A.R. 90-40-17(b)).

Therefore, USD #290 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.A.R. 91-40-17(2) and K.A.R. 90-40-17 (2)(b)(1) by providing parents at least 10-day prior written notice of eligibility and IEP team meetings regarding their child which includes the time, purpose, and location of the meeting.

2) a) Within 40 calendar days of the date of this report, USD #290 shall develop and submit to SETS for approval, a plan for the implementation of training for all special education staff regarding all of the legal requirements for providing notice of an IEP meeting.

   b) Once the training plan described above under Item a) has been approved by SETS, USD #290 must implement that plan within 20 school days after SETS approval.

   c) Upon completion of training of identified staff, USD #290 shall submit to SETS a record showing the dates of training and an attendance log signed by all staff who participated in the training.

3) Further, USD #290 shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.
For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;
(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #233
ON FEBRUARY 21, 2022

DATE OF REPORT MARCH 1, 2022

This report is in response to a complaint filed with our office on behalf of ____by _____ his mother, _____. In the remainder of the report, _____ will be referred to as "the student" and _____ will be referred to as "the parent" or "the mother".

The complaint is against USD #233 (Olathe Public Schools). In the remainder of the report, the "school," the "district" or the "local education agency (LEA)" shall refer to this responsible agency.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on February 21, 2022 and the 30-day timeline to investigate this complaint ends on March 23, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the mother by telephone on February 24, 2022. Deb Chappell, Assistant Director of Special Services for USD #233, was also interviewed by the Complaint Investigator on February 24, 2022.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the parent. The following materials were used as the basis of the findings and conclusions of the investigation:

- Formal Complaint Request Form signed by the parent on February 21, 2022

Background Information

This investigation involves a preschool student who is eligible for special education and related services. His current Individualized Education Program (IEP) was developed on December 1, 2021. The student currently receives his special education and related services at the Harmony Early Childhood Center in USD #233.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised one issue that was investigated.

> ISSUE ONE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), will reduce the student's special education program by 60% from the current 30 hours per week (6 hours for five days per week) to 12 hours per week (3 hours for four days per week) due to a unilateral change in the structure of the district's early childhood program beginning in the 2022-23 school year.

Positions of the Parties

The parent reported that Dr. Kim Hawkins, Assistant Director of Early Childhood for USD #233, informed them on February 4, 2022 that the Harmony Early Education Center would be changing to a half-day program instead of the current full-day program in order to align with other early childhood programs. The mother indicated that this decision was "a closed door decision" made by the superintendent and the leadership team of USD #233. The parent believes this decision was not based on research or any consideration for the IEPs of students with disabilities currently receiving special education and related services at the Harmony Early Education Center.

The mother reported that this unilateral change will result in a 60% reduction in the student's services from 30 hours per week (6 hours for five days per week) to 12 hours per week (3 hours for four days per week) beginning in the 2022-23 school year.

On February 9, 2022, the parent reported that she and her husband met with Dr. Hawkins during parent/teacher conferences. The mother reported they told Dr. Hawkins that they believed this change would not provide a free appropriate public education (FAPE) to the student as described in his current IEP, which was reviewed and revised on December 1, 2021. They also indicated that they would not consent to this material change in services and substantial change of placement. The mother indicated that Dr. Hawkins then informed them that, if the parents did not consent to the changes, the student's IEP would be reduced by 24.99% without the parents' consent during the next school year.

USD #233 reported that the structure of the district's early childhood program at Harmony Early Education Center is being changed beginning in the 2022-23 school year in order to align with other early childhood programs. However, Ms. Chappell noted that the student's IEP team has not yet met to review and revise, if appropriate, the December 1, 2021 IEP in light of the programmatic re-structuring of the early childhood program. The district is in the process of scheduling IEP team meetings for all students with disabilities who will be affected by the programmatic change in order to make individualized decisions for providing FAPE.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #233.

USD #233 acknowledged the structure of the district's early childhood program at Harmony Early Education Center is being changed beginning in the 2022-23 school year in order to align with other early childhood programs.

The parent acknowledged that the student's IEP team has not yet met to review the student's IEP in light of the programmatic changes being made at the Harmony Early Education Center in the 2022-23 school year and that USD #233 has not provided any prior written notice for a proposed change is the special education and related services or placement from those required by the student's December 1, 2021 IEP.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.320(a)(4) require school districts to develop an individualized education program (IEP) for each student with a disability that includes a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, that will be provided to enable the student to receive a free appropriate public education (FAPE).

Federal regulations at 34 C.F.R. 300.324(b)(1) require school districts to review and revise, if appropriate, each student's IEP periodically, but at least annually, to address any lack of expected progress towards the annual goals and in the general education curriculum, any information about the student provided by the parents, the student's anticipated needs, or other matters.

Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

State regulations at K.A.R. 91-40-27(a)(3) require school districts to obtain parent consent before making a material change in services or a substantial change in placement. "Material change in services" is defined at K.A.R. 91-40-1(mm) as an increase or decrease of 25% or more of the frequency or duration of a special education service, related service, or supplementary aid or service specified in the child's IEP. "Substantial change in placement" is defined at K.A.R. 91-40-1(sss) as the movement of an exceptional child for more than 25% 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.

Federal regulations at 34 C.F.R. 300.153(c) and state regulations at K.A.R. 91-40-51(b)(1) require that a state child complaint allege a violation of the IDEA that has occurred not more than one year prior to the date the complaint is received by the state education agency.

In this case, the programmatic changes being made at the Harmony Early Education Center in the 2022-23 school year by USD #233 would certainly be considered "other matters" and would require that the student's IEP team to meet to review and revise

the student's IEP, if appropriate. It is noted the mother expressed concerns that the programmatic changes at the Harmony Early Education Center would result in a 60% reduction in the student's current services from 30 hours per week (6 hours for five days per week) to 12 hours per week (3 hours for four days per week) beginning in the 2022-23 school year and indicated that she would not consent to such a material change in services or substantial change of placement. The mother was then told by USD #233 that the student's special education and related services would unilaterally be reduced by 24.99%, even if she disagreed and did not provide consent.

The parent filed the state child complaint on February 21, 2022. However, the parent acknowledged that USD #233 has not yet held an IEP team meeting to discuss the provision of FAPE to the student in light of the programmatic changes in the early childhood program. In addition, the parent acknowledged that USD #233 has not provided a prior written notice to her for any proposed change to the special education and related services or placement from those required by the student's December 1, 2021 IEP at this time.

At this time, the mother's allegation is that a violation of the IDEA will occur when the student's special education and related services are changed in accordance with the programmatic changes to the structure of the early childhood program at Harmony Early Education Center which will take effect in the 2022-23 school year. Based on the foregoing, a violation of special education statutes and regulations is not substantiated because a violation of the IDEA has not yet occurred. It is noted that the parent may file another state child complaint if, and when, she believes USD #233 has violated the IDEA.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
MARYSVILLE PUBLIC SCHOOLS, USD #364
ON FEBRUARY 8, 2022

DATE OF REPORT: MARCH 9, 2022

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

Investigation of Complaint

The complaint Investigator spoke by telephone with Caroline Green, Director of Special Education for the Marshall County Special Education Cooperative, on February 14 and 25, and March 2, 2022. The investigator spoke by telephone with the student's father and mother on February 18, 2022.

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

- Notice of Meeting dated March 23, 2021
- IEP for the student dated April 14, 2021
- Email exchanges dated August 30 and 31, 2021 between the algebra teacher and the parents
- Email dated September 6, 2021 from the parent to the principal, the director of special education, the student's special education teacher, the algebra teacher, and the chemistry teacher
- Email dated September 7, 2021 from the principal to the parent
- Email dated September 7, 2021 from the student's mother to district staff
- Email exchange dated September 8, 2021 between the director of special education and the parent
- Email dated September 9, 2021 from the principal to the parent

- Notice of Meeting dated September 9, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 14, 2021
- Email exchange dated September 20, 2021 between the student's mother and the director of special education
- Email dated September 20, 2021 from the principal to the student's mother
- Notice of Meeting dated September 21, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 21, 2021
- Email dated September 28, 2021 from the Dean of Instruction at the community college to the student's algebra and chemistry teachers
- Academic accommodations for the community college dated September 28, 2021
- Email dated September 29, 2021 from the Dean of Instruction at the community college to district staff
- Prior Written Notice for Identification, Initial Services, Placement, Change of Services, Change of Placement, and Request for Consent dated October 9, 2021
- Notice of Meeting dated October 20, 2021
- IEP for the student dated October 20, 2021
- Course description for the algebra class from the community college
- Online school calendar for the district
- Special Education Provider Handbook for the 2021-22 school year
- Attendance record for the student for the 2021-22 school year
- Record of special education teacher absences for the 2021-22 school year
- Activity log for the student
- First semester grade report for the student for the 2021-22 school year

Background Information

This investigation involves an 18-year-old boy who is completing his senior year at his local high school. The student receives special education services under the disability category of Autism.

Issues

In his complaint, the parent outlined eleven areas of concern. Nine of those concerns relate to the implementation of the student's April 14, 2021 and/or October 20, 2021 IEPs. Eight of these issues address allegations that the district failed to provide the accommodations specified in these IEPs and will be addressed in Section One of this report. The ninth issue related to IEP implementation focuses on the provision of special education services specified in the student's IEPs. That issue will be addressed in Section Two of this report. The two remaining issues – which center on topics other than IEP implementation – will be addressed separately in Section Three and Section Four of the report.

Section One – Failure to Provide IEP-Specified Accommodations/Modifications

(Issues 1-5 and 9-11)

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Issue One

The student's algebra teacher did not email the parents about late assignments at the beginning of the semester.

Parent's Position:

The parent asserts that the student had not turned in required coursework within the designated time frame, but the teacher did not timely contact the parents to alert them to the problem.

District's Position:

It is the position of the district that the district was not required to provide this accommodation because the student was taking College Algebra as a dual credit class, earning credit at both the high school and the local community college. The district contends that the community college accommodations did not require the teacher to notify the parents that assignments were late.

Investigative Findings:

The "Supplementary Aids and Services" section of the student's April 14, 2021 IEP includes the following accommodations to be delivered in the general education setting:

- Extended time (time and a half);
- [the student] will not have spelling counted against him on assignments and assessments where spelling is not being tested;
- arithmetic/periodic tables and formulas provided;
- parents (sic) will need to email parents if assignment is late two days;
- guided notes provided if remote learning occurs; and
- [the student] will be allowed to listen to music using headphones/phone during work time during the fourth quarter with a set criteria.

The parents were provided with prior written notice on April 14, 2021 that "instead of teachers contacting parents one (sic) a week, they will know (sic) email if an assignment is late 2 days."

The student's April 14, 2021 IEP includes only one annual goal:

> By the end of the IEP period, to increase his ability to complete and turn in assignments on time, [the student] will turn in 100% of his work on time in all core classes (Math English, History, and Science) as recorded in the grade book.

During the fourth quarter of the 2020-21 school year, the student was, according to baseline information in the April 2021 IEP, turning 77% of his assignments in on time. At quarterly monitoring periods following the development of the April 2021 IEP, the student was to increase his level of assignment completion/submission to 82%, then 87%, and 93% until reaching his goal of 100% by the fourth monitoring period.

The first day of school for the 2021-22 school year for the student was August 17, 2021. The student was enrolled for the first semester in a College Algebra class. On August 30, 2021, the algebra teacher sent an email to the student's parents to let them know that the student had not to date submitted any completed assignment. The student's mother responded via email on August 31, 2021, thanking the teacher for the heads up and telling her that the parents would have the student complete his assignments that evening. The student's mother also provided a "good email" address for the student's father for future reference.

On September 6, 2021, the parent sent an email to the principal stating that the student had informed him that the algebra teacher would no longer be accepting late assignments. In the email, the parent stated that the student's IEP allowed for extended time to turn in assignments and required teachers to notify the parents if assignments were late.

The principal wrote back to the parent on September 7, 2021 stating that the school was investigating whether the algebra class was being taken for high school or college credit. According to the email, if the course was being counted for college credit, then "there is a different protocol for carrying out the IEP." The principal stated that the algebra teacher gave the student "1-2 weeks to complete the missing work. He did not turn in the work after he was given the extended time."

The director of special education sent an email to the student's parents and school staff on September 8, 2021. The director stated

> Please let us know if [the student] has registered to take College Algebra with Highland Community College. If he is taking it for college credit as well as high school credit that may affect the IEP. In which case I would agree [with an email from the student's mother] that we need to schedule an IEP meeting…

The parent wrote back to the director on September 8, 2021 stating that he assumed that the course was for college credit "since the class is titled College Algebra, but it seems that [the principal] has indicated [the student] is not on the college roll."

The director responded to the parent on that same date stating "College Algebra is a dual credit concurrent course for Highland Community College meaning it can be taken for high school credit as well as college credit if desired. Students enroll online. I just got my list of enrolled students from Highland late Friday afternoon and [the student] is not on that list. I sent [the student] an email letting him know that the deadline is September 15th."

On September 9, 2021, the principal sent the parent an email stating "as of right now [the student] has not enrolled in College Algebra for college credit…If he stays taking the course as a high school credit then his accommodations will be followed as per his IEP in place…"

On September 14, 2021, the student's IEP team met to discuss – among a number of topics – the student's failure to submit completed homework for his College Algebra class. At the time of the meeting, approval had not been granted by the community

college for the student to take the class for dual credit (high school and the local community college). The parents were given prior written notice that, if dual credit was approved, the accommodations/modifications shown in his April 14, 2021 IEP would no longer be implemented in the algebra class. The parents decided to wait until after the first College Algebra test had been conducted to decide if the student would take the course for community college credit.

A second IEP team meeting was held on September 21, 2021 after the student failed his first College Algebra test. As of the date of the second meeting, the student had not yet applied for dual credit for the algebra class from the community college. The parents were again given prior written notice that if the community college approved dual credit, the accommodations specified in his then current IEP would no longer be provided in the algebra class.

On September 20, 2021, the student's mother sent an email to the director of special education stating

> Since our last IEP meeting we have attempted to enroll [the student] [in college credit classes] through the admissions process [but] the personal (sic) at Highland are not seeing his admission and told us that their window has closed and that it was not concrete and they are not sure he can be enrolled at this point. So he is not enrolled. As of right now [College Algebra is] still a high school class…per his IEP should be followed.
>
> [The student] had missing assignments in [algebra] class on 8/24 – I was notified…on 8/30 – which goes against his IEP. [His parents] are both to be notified by the 2nd day of missing work…per to help with his time and half and trying to get thing turned in on time.

On September 20, 2021, the principal sent an email to the student's mother stating

> I will notify the staff that [the student] will not be taking courses for college credit. This way they can make sure that accommodations are being met for high school purposes. I will make sure all of this is in place before the meeting and try to have a plan for the…classes you have discussed in your emails.

The Dean of Instruction for the community college sent an email on September 28, 2021 to the student's algebra teacher which included academic accommodations for the student. These accommodations included the following:

- extra time on exams and quizzes (1.5 times the regular exam time is allowed):
- distraction reduced testing location;
- instructor notes/PowerPoints, if available, or note taker; and
- permission for the student to remove himself from the classroom as needed.

On September 29, 2021, the dean sent an email to district staff confirming the student's acceptance for dual credit in College Algebra and another class.

An IEP team meeting was held on October 20, 2021. At that meeting, the team revised the student's April 21, 2021 IEP, making changes to (among a number of sections) the "Supplementary Aids and Services" portion of the IEP. The "Supplementary Aids and Services" section of the IEP was amended as follows:

- extended time – teacher will notify parent that the assignment is past due; he will have 24 hours to complete this assignment once he has been informed;
- arithmetic/periodic table and formula provided;
- guided notes if remote learning occurs; and
- spelling not counted against him on assignments and assessments where spelling is not tested.

The parents were provided with prior written notice of the district's proposed changes to the IEP on October 20, 2021. The notice spelled out changes to supplementary aids and services listed above but also included a caveat. According to the notice, the IEP team proposed that these accommodations would not be provided in the student's Advanced Composition class and in College Algebra since both courses were being taken for "dual college credit." The student's mother gave her written consent for the district's proposed changes.

The student earned a grade of "F" for the semester in his College Algebra class with a score of 42%. He had 30 missing assignments for the course. According to the teacher, he received zeros on all missing assignments, and his failure to complete practice problems affected his ability to score well on tests.

<u>Conclusions:</u>

Throughout the first semester of the 2021-22 school year, the student earned credit from the high school for his College Algebra course. The teacher incorrectly assumed that the student had been approved to take her class for dual credit (high school and community college) but approval for credit from the community college was not granted until September 29, 2021. While the student's mother gave written consent for the district to withdraw IEP-based accommodations for the student in his algebra

and Advanced Composition classes as of October 20, 2021, those accommodations should have been provided to the student at the start of the 2021-22 school year. However, the teacher did not notify the parents of the student's late assignments as required by the student's April 14, 2021 IEP. A violation of special education statutes and regulations is substantiated on this issue.

Issue Two:

The College Algebra teacher did not provide accommodations specified in the student's IEP.

Parent's Position:

The parent states that the Algebra teacher refused to accept late assignments from the student and did not allow extra time for the student to complete the first test of the semester. The parent asserts that after being informed of the accommodations in the student's IEP, the teacher addressed the parent's concern by deleting previously assigned grades, an action which the parent contends limited the parents' ability to judge the student's progress in the class. It is the parent's position that this action resulted in the student failing the class.

District's Position:

The algebra teacher states that she is unsure whether or not she allowed the student extra time to complete the first test of the year, but the district stipulates that the College Algebra teacher did not allow "extra time" as required by the student's April 14, 2021 IEP.

Investigative Findings:

The April 14, 2021 IEP required that the teacher notify the parents if an assignment is two days late. The IEP also stated that the student was to be given "extended time" but does not specify whether this accommodation was to be provided for tests, assignments, or both, though the parents believe that the accommodation applied to both tests and assignments. The IEP does not require teachers to accept assignments that are submitted after the "time and a half" extension.

As established in Issue One, the algebra teacher believed that the student was, from the beginning of the school year, taking her course for dual credit from the community college and felt she was not required to implement any of the accommodations specified in the student's April 2021 IEP.

After an IEP team meeting on September 14, 2021, the teacher told the parents that grades from previously late assignments would not count against the student, but no evidence was presented by the district to show that the teacher provided the parents with notice when the student continued to be late in turning in assignments.

As noted above under Issue One, the parents were given prior written notice on September 14 and 21, 2021 that if the student was approved for dual credit for the College Algebra class, then the accommodations specified in the student's April 2021 IEP would no longer be available in the class. The community college provided the algebra teacher with a list of accommodations for the student on September 28, 2021, one day before the community college confirmed the student's dual credit enrollment in the class. The accommodations specified in the community college plan for the student allowed extra time but did not require the teacher to notify parents when assignments were late. Following an IEP team meeting on October 20, 2021, the student's mother gave written permission for the district to withhold IEP-based accommodations/ modifications during the student's algebra and Advanced Composition classes.

Conclusions: No evidence was provided by the district to show that the algebra teacher allowed the student extra time as specified in his April 14, 2021 IEP to complete assignments or extended time to complete his first test. A violation of special education statutes and regulations is substantiated on this aspect of this issue. However, the student's April 2021 IEP does not compel the teacher to accept any assignment turned in after the time and a half extension period. Therefore, a violation of special education statutes is *not* substantiated on this aspect of this issue.

Issue Three:

The Chemistry teacher did not email the parents about the student's late work at the beginning of the first semester or at the beginning of the second semester.

Parent's Position:

It is the position of the parent that the Chemistry teacher failed to notify the parents when the student had not turned in assignments on time.

District's Position:

The district stipulates that the Chemistry teacher did not in a timely fashion notify the parents when the student was late turning in his assignments.

Investigative Findings:

The student has been enrolled in Chemistry since the start of the 2021-22 school year.

As noted above under Issue One, the student's parents were to be notified when the student failed to submit an assignment on time.

In an email to the director of special education dated September 20, 2021, the student's mother wrote

> [His parents] are both to be notified by the 2nd day of missing work…per to help with his time and half and trying to get thing turned in on time. [This accommodation wasn't] followed by [the student's Chemistry teacher]. I have not heard from [that teacher]. I believe his first missing assignment was on 9/7. He has 6 missing assignments.

It is the policy of the student's Chemistry teacher to accept late work at any time during the school year and to offer students the opportunity to retake some assignments for a better grade. However, the teacher did not contact the parents in the manner specified in the student's April and October 2021 IEPs to let them know that assignments were late.

The student earned a first semester grade of D- in Chemistry. His current grade in Chemistry is B-.

Conclusion: Because the Chemistry teacher did not notify the parents when assignments were past due as required by both the student's April and October 2021 IEPs, a violation of special education statutes and regulations is substantiated on this issue.

Issue Four:

The Robotics teacher did not email the parents about the student's late work at the beginning of the first semester.

Parent's Position:

The parent asserts that the Robotics teacher (who is also the student's Chemistry teacher) failed to inform the parents when the student was late turning in assignments. The parent further contends that the teacher eliminated Robotics assignments and instead allowed the student to work on his Chemistry assignments during Robotics class.

District's Position:

The student was enrolled in a Robotics class for the first semester of the 2021-22 school year.

The district stipulates that the Robotics teacher did not inform the parents about missing or late work at the beginning of the first semester of the 2021-22 school year.

Investigative Findings and Conclusions: The student earned a grade of A- in his Robotics class for the first semester. As noted above under Issue Three, it is the practice of the Chemistry/Robotics teacher to accept late assignments at any time. While late assignments did not appear to negatively impact the student's semester grade in his Robotics class, the district stipulates that the teacher did not contact the parents whenever assignments had not been submitted by the original due date. A violation of special education statutes and regulations is substantiated on this issue.

Issue Five:

The Economics teacher did not email the parents about the student's late work at the beginning of the first semester.

Parent's Position:

The parent asserts that the Economics teacher failed to inform the parents about the student's late assignments until after a team meeting in September 2021.

District's Position

The district stipulates that the Economics teacher did not contact the parents at the start of the 2021-22 school year to inform them of the student's late assignments.

Investigative Findings;

The student was enrolled in Economics for the first semester of the 2021-22 school year.

According to the district, the Economics teacher will accept late assignments at any time prior to the last day of class. While the teacher was aware that the student had an IEP, it was not until after the start of the second semester that he was informed that he should be notifying parents whenever an assignment was not submitted by the original due date.

The Economics teacher states that "almost all of [the student's] missing points came from assignments that were never turned in…I did talk to [the student's] guardians at parent teacher conference and did share with them that [the student] had expressed

that his only goal is to do enough to pass and that he had several [assignments] that were never turned in."

The student earned a first semester grade of D+ in his Economics class.

Conclusions:
Because the Economics teacher failed to timely notify the student's parents when assignments were late as required by the student's April and October 2021 IEPs, a violation of special education statutes and regulations is substantiated on this issue.

Issue Nine:

The Chemistry teacher did not email parents about late work at the beginning of the second semester.

As noted above under Issue Three, the district stipulates that the Chemistry teacher has not informed the parents when the student failed to submit assignments on time. A violation of special education statutes and regulations is substantiated on this issue.

Issue Ten:

The Computer Programming teacher did not email the parents about the student's late work at the beginning of the second semester.

Parent's Position:
The parent asserts that the Computer Programming teacher stated that he would not be following the student's IEP and "did not have time to babysit" the student.

District's Position:
The district stipulates that the Computer Programming teacher did not notify the parents when the student was late turning in assignments.

Investigative Findings and Conclusions:
The student has been enrolled in the Computer Programming class since the start of the second semester of the 2021-22 school year.

Although neither party provided any specific facts regarding this allegation, the district has stipulated that the Computer Programming teacher did not notify the parents when the student failed to turn in his assignments on time. Under these circumstances, a violation of special education statutes and regulations is substantiated on this issue.

Issue Eleven:

The College Algebra teacher did not provide notes or reduce the number of problems for the student at the beginning of the first semester.

Parent's Position:

The parent contends that the algebra teacher refused to "abide by the IEP."

District's Position:

The district stipulates that the algebra teacher did not allow for modification of the student's math assignments because the student was taking the class for dual credit (high school and community college).

Investigative Findings:

As noted above, under Issue One, the student's April 14, 2021 IEP included – among others – the following accommodation:

> guided notes provided *if remote learning occurs* (emphasis added)

At no time during the 2021-22 school year has the district moved to a remote learning model.

The student's April 2021 IEP does not specifically require a reduction in the number of problems the student is to complete. The section of the student's April 14, 2021 IEP entitled "Program Modifications and Supports for School Personnel" contains the following statement: "Modified Math Assignments with modifications approved by the SPED teacher." No evidence was presented by either side to show that the special education teacher had approved any modifications to the student's math assignments.

On October 20, 2021, the district provided the parents with prior written notice of the district's proposal that the student "no longer [have] shortened assignments in math [because the student] is taking College Algebra for a dual credit." The student's mother gave her written consent for this change.

Conclusions:

The student's April 14, 2021 IEP did not require the district to provide guided notes unless the district moved the student to a remote learning model. At no time during the 2021-22 school year has the district moved to a remote learning model. Therefore, the district was not required to provide the student with guided notes. A violation of

special education statutes and regulations is *not* substantiated with regard to this aspect of this issue.

While the student's April 14, 2021 IEP did not specifically require the district to reduce the number of problems the student was required to complete in his algebra class, the IEP did call for "modified math assignments." The district provided the parents with prior written notice on October 20, 2021 that the student would no longer have shortened assignments in math which leads to the reasonable assumption that the modification was required up until that point. The district stipulates that no accommodations or modifications were provided by the College Algebra teacher. A violation of special education statutes and regulations is substantiated on this aspect of this issue.

Section Two – Failure to Provide Special Education Services

(Issue 6)

Applicable Statutes and Regulations:

As indicated above under Section One of this report, federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Issue Six:

The student was not assigned a special education instructor when his primary instructor was absent from school for two weeks.

Parent's Position:

The parent contends that the special education teacher was absent from work for a period of two weeks. According to the parent, the student reported to him that no one had been assigned to assist the student during the teacher's absence.

District's Position:

It is the position of the district that the provision of special education services to the student was unaffected by the absence of the special education teacher.

Investigative Findings:

The "Special Education Services" section of the student's April 14, 2021 IEP states that the student was to begin the 2021-22 school year with the following services:

- 10 minutes of special education services in a special education setting 5 times each week for a "check in;"
- 48 minutes of special education support from a paraeducator for 5 days each week in the general education math class; and
- 20 minutes of service each week from a social worker.

The student's IEP was revised on October 20, 2021. According to the new IEP, the student was to receive the following services:

- 28 minutes of special education support in a resource room for 4 days each week for AEP (Academic Enrichment Period), and
- 20 minutes of social work services per week.

On September 6, 2021, the parent sent an email to the building principal. In that email, the parent stated that he had heard that the student's special education teacher was "going to be away from school for an extended time period." The parent asked who the student would be assigned to during the teacher's time away from school.

The student's mother sent an email to district staff on September 7, 2021 asking whether another teacher had been assigned to assist the student while the special education teacher was absent.

Records provided by the district show that the student's special education teacher has been absent for a total of 9.75 days since the start of the 2021-22 school year. The teacher was absent two days in August 2021, five and a quarter days in September 2021, one day in October 2021, and one and a half days in January 2022. Records provided by the district show that substitute coverage was provided on all of these dates.

A daily log regarding the student's assignments and his check-ins was provided by the district. The log shows both morning and afternoon check-in times for the student. According to the log, the student completed his check-in on all days when the special education teacher was absent.

Conclusions:

Substitute coverage for the student's special education teacher was provided on all of the dates during the 2021-22 school year when the teacher was absent. Additionally, records provided by the district show that the student has consistently been provided with check-in opportunities even when the teacher was absent. A violation of special education statutes and regulations is *not* substantiated on this issue.

Section Three – IEP Review by General Education Teachers

(Issue 7)

Applicable Statutes and Regulations:

Once an IEP has been completed and consent for services has been obtained from the parents, the child's IEP must be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Regardless of whether an individual participates in the IEP meeting, all individuals who are providing education to the child (regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementation of the IEP) must be informed by the IEP team of

1. his or her specific responsibilities related to implementing the child's IEP, and
2. the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP (K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2)).

Issue Seven:

Teachers are not reviewing IEPs.

Parent's Position:

According to the parent, several of the student's teachers reported during parent teacher conferences that they were unaware of what was contained in the student's IEP.

District's Position:

The district stipulates that general education teachers were not timely informed of their responsibilities related to the implementation of the student's IEP.

Investigative Findings:

According to the director of special education, service providers are to meet early in the school year with the general education teachers of all students on their caseloads

to inform the teachers that students are being served under an IEP. The service providers are to discuss the general education teacher's responsibility with regard to individual students and to review applicable accommodations and/or modifications. The service providers are to ensure that the general education teachers know how to access the IEPs of their students and are required to have general education teachers sign off to show that they have been given the information they need.

Two of the student's teachers reported that they were aware that the student had been served under an IEP for several years but were unaware of the provisions of the student's current IEP.

While, according to the director, the case manager did meet with the student's general education teachers, it appears that some if not all of those meeting took place in mid-October 2021 at the earliest. Even though IEP team meetings regarding the student were held in September of 2021, the student's Chemistry/Robotics teacher, for example, reported that he did not understand his responsibility to inform the parents of late assignments until after the start of the second semester of the 2021-22 school year. The director states that no procedures are currently in place in the district to verify when special education service providers share information with general education teachers.

Conclusions:

District procedures regarding the sharing of IEP-related responsibilities with the student's general education teachers were not followed. The student's general education teachers were not informed in a timely manner about their responsibilities regarding the provision of accommodations at the beginning of the 2021-22 school year, and the majority did not have a clear understanding of how to implement those accommodations. At least one general education teacher acknowledged that he was unclear about how accommodations were to be implemented well into the second semester. Because the district failed to ensure that general education teachers were informed of their specific responsibilities regarding the student's IEP, a violation of special education statutes and regulations is substantiated on this issue.

Section Four – Provision of Parent Rights

(Issue 8)

Applicable Statutes and Regulations:

The revision of IDEA (Individuals with Disabilities Education Act) in 2004 eliminated the requirement to provide a copy of Parents Rights Notice with the notification of each IEP meeting. Schools are required to provide a copy of the notice

- at least one time in a school year; and
- upon a referral or a parent request for initial evaluation; or
- first formal complaint or due process complaint filed in a school year; or
- upon a disciplinary removal from school that constitutes a change in placement; and
- upon parent request (34 C.F.R. 300.504).

Issue Eight:

The district failed to provide the parents with a copy of their parent rights at an emergency IEP meeting.

Parent's Position:

The parent contends that he and the student's mother were not given a copy of their parent rights at an IEP meeting on September 22, 2021. The parent does not assert that the district refused to provide a copy of parent rights upon his request but stated that the director of special education who attended the meeting should have known that the document should have been provided.

District's Position:

It is the position of the district that the special education teacher followed established district procedures and provided parents with a copy of their parent rights at the student's annual IEP team meeting in October 2021.

Investigative Findings:

On pages 3-5, the district's special education procedures and policies handbook addresses "Parent Rights/Procedural Safeguards." The handbook states

> A copy of the Parent Rights in Special Education Notice must be provided to both parents and in the native language of the parents/adult student or other mode of communication used by the parent/adult student.

On September 7, 2021, the student's mother sent an email to district staff in which she stated that an "emergency IEP meeting may need to be scheduled" to address concerns regarding the implementation of the student's IEP. The meeting was held on September 14, 2021.

Following the meeting, the parents were mailed a copy of a form entitled "Prior Written Notice for Identification, Initial Services, Placement, Change of Services, Change of Placement, and Request for Consent." Page 3 of that document contains a section entitled "Procedural Safeguards to Protect Parent's Rights." That section reads as follows:

> Both state and federal laws concerning the education of children with exceptionalities include many parental rights. Receiving notices of action the school wants to take in regard to your child and being a part of your child's educational planning team are examples of the rights the laws give you. These laws also require that the school follows certain procedures to make sure you know your rights and have an opportunity to exercise those rights. The school is required to give you a copy of the rights of a parent at least one time each school year. To receive an additional copy of your rights and procedural safeguards available to you, and if you have any questions regarding your rights, you may contact the special education director of the school or special education cooperative.

Another IEP team meeting was held on September 22, 2021. Following that meeting, the parents were again provided with prior written notice of actions proposed by the district. As previously described, the notice form contained information regarding procedural safeguards to protect parent rights.

The student's IEP was reviewed and revised on October 20, 2021. According to the section of the IEP entitled, "Provide to Parent," the parent was provided with a copy of parent rights on October 20, 2021. The parent provided written confirmation of receipt of procedural safeguards on October 21, 2021.

Conclusions:

Special education statutes and regulations do not require districts to provide parents with a copy of parent rights at every meeting related to the student. IEP team meetings in September 2021 were held for the purpose of addressing concerns regarding the implementation of the student's IEP, not to discuss disciplinary removal, a formal complaint, or a due process hearing. The parent does not contend that the district refused a request from either parent for a copy of parent rights. Parent rights were presented to the parents at the annual IEP review meeting on October 20, 2021. A violation of special education statutes and regulations is *not* substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, violations occurred with regard to

- 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) which require that the district provide a FAPE to students by implementing their IEPs as written; and

- 34 C.F.R. 300.323(d)(2) which requires that general education teachers be informed about their responsibilities regarding the implementation of IEPs.

Therefore, USD #364 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with

    - 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written and by providing the student with the accommodations that are specified in his October 20, 2021 IEP unless or until those accommodations are amended or deleted by the student's IEP team; and

    - 34 C.F.R. 300.323(d)(2) by ensuring that general education teachers are fully informed of their responsibilities regarding the implementation of the IEPs of this student and other special education students in the student's building of attendance.

2) Submit to SETS for approval, by no later than April 1, 2022, a plan to address issues raised in this complaint. That plan shall include:

    a. A schedule for training of all general education teachers regarding their legal responsibilities regarding the implementation of accommodations specified in the IEPs of special education students in their classrooms.

    b. The development of a policy which includes strategies for documenting that general education teachers have been informed of the accommodations/ modifications required by the IEPs of each of the special education students in their classrooms by no later than the end of the first full week of any given

school year and/or no later than the first full week after any change in a student's class schedule.

c. The policy specified above under Corrective Action 2b shall include the establishment of deadlines for reporting by special education staff to the director of special education confirming that general education teachers have been informed of their responsibilities regarding the implementation of accommodations for all special education students in the building.

3) Submit to SETS, by no later than June 1, 2022, a summative report regarding the implementation of IEP accommodations for the student identified in this complaint. The summary shall include:

a. Verification that all applicable general education staff members have received training regarding their responsibilities for the implementation of the student's IEP accommodations and have a clear understanding of how and when parents will be notified if assignments have not been submitted on time and of how the extended time accommodation is to be operationalized; and

b. Evidence to show that accommodations specified in the student's October 20, 2021 IEP (or any revisions to that IEP completed during the remainder of the 2021-22 school year) have been implemented.

4) Submit to SETS by no later than April 1, 2022, a plan for the provision of compensatory services for the student to address the district's failure to provide notice to the student's parents when he failed to submit assignments on time. The plan shall:

a. Provide the opportunity for the student to improve his grades in his College Algebra, Economics, and Chemistry classes by submitting any or all late assignments and retaking tests by no later than July 1, 2022. All submitted assignments shall be graded without any consequence for the date of submission.

b. If requested by the student, provide – at no cost to the family – tutoring in each of these subjects – either by district staff or through a private agency. Twenty minutes of tutoring will be allowed for every missed assignment.

If the student opts to participate in tutoring sessions, the student and the district will develop a schedule for tutoring sessions, which may be combined for the convenience of the parties. If the student misses more than three scheduled sessions, the remaining sessions will be cancelled. The student or his parents are to be reimbursed at the state approved rate for mileage to and from the tutoring site.

The student will have the option of accepting all or part of the compensatory services or of rejecting the services in their entirety. The student must inform the district no later than May 1, 2022 as to what portion, if any, of the compensatory services he plans to accept.

5) By no later than May 15, 2022, the district shall inform SETS of the student's decision regarding the compensatory services specified above in Corrective Action 4.

Further, USD #364 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:

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

2) 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

3) 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, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212. That notice of appeal must be delivered to Special Education and Title Services, designee of the State Commissioner of Education, within 10 calendar days from the date of this report. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which is 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 (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #111
ON FEBRUARY 10, 2022

DATE OF REPORT MARCH 11, 2022

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

The complaint is against USD #111 (Doniphan West Public Schools) who contracts with the Doniphan County Education Cooperative #616 (DCEC) to provide special education and related services to students enrolled in USD #111. In the remainder of the report, "USD #111," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 10, 2022 where the parent originally made four allegations. The Complaint Investigators found that one of the allegations did not fall under the state and federal regulations implementing the IDEA and thus they did not have the authority to investigate those allegations. The mother was provided with resources for addressing that allegation on February 14, 2022.

Investigation of Complaint

Donna Wickham and Nancy Thomas, Complaint Investigators, interviewed the mother by telephone on February 11, 2022, February 21, 2022 ,and again on February 24, 2022 as part of the investigation.

USD #111 made the following school staff available for a telephone interview on February 24, 2022:

- Shay Carter, Director of Doniphan County Education Cooperative # 616 (DCEC)
- Chris Lackey, Principal of Doniphan West Jr./Sr. High School in USD #111
- Becky Feuerbacher, Special Education Teacher at Doniphan West Jr./Sr. High School in USD #111
- Marie Moore, School Psychologist, at DCEC

The Complaint Investigators also had phone calls and email exchanges with _____ (the parent) and Mr. Chris Lackey and Ms. Shay Carter between February 11, 2022 and March 4, 2022 to gather additional information and to clarify documentation provided by each party.

In completing this investigation, the Complaint Investigators reviewed documentation provided by both the parent and the district. It is noted that the parents and the district both provided documents including emails and phone logs related to allegations that were not investigated and, while all of this documentation was reviewed, it was not found to be relevant to the allegations that were investigated. The following materials were used as the basis of the findings and conclusions of the investigation:

- Functional Behavior Assessment/Behavior Intervention Plan, Keystone Learning Service, Doniphan West Grade School dated October - December 2019
- Doniphan County Education Cooperative 616 Initial Evaluation and Re-Evaluation Team Report dated December 9, 2019
- Individualized Education Program (IEP) dated December 7, 2020
- Doniphan West Jr./Sr. High School 2021-2022 Student Handbook
- DCEC #616 Mini-Handbook dated August 2021
- Email dated August 17, 2021at 2:23 p.m. from Ms. Feuerbacher to general education teachers in USD #111
- Attendance records for the student dated August 23, 2021 through February 16, 2022
- Behavior Detail Report dated December 3, 2021 through February 15, 2022
- Counseling Contact Log dated October 4, 2021 through January 13, 2022
- Weekly or daily summaries from Ms. Feuerbacher to parent for the following dates: November 1-8, 2022; November 8-12, 2022; December 8, 2022; December 10, 2022; December 13, 2022; December 14, 2022; January 11,

2022; January 13, 2022; January 21, 2022; January 24, 2022; January 25, 2022; January 26, 2022; January 28, 2022; January 31, 2022; February 1, 2022; February 3, 2022; February 7, 2022; February 8, 2022; February 9, 2022; February 10, 2022; February 15, 2022; February 16, 2022

- Email dated October 12, 2021at 9:56 a.m. from principal to student and parent
- Email dated November 10, , 2021at 2:43 p.m. from principal to parent
- Email dated November 11, 2021at 8:42 a.m. from principal to student
- Email dated November 11, 2021at 5:34 p.m. from principal to parent
- Email dated December 1, 2021at 1:25 p.m. from principal to parent and student
- Email dated December 6, 2021at 3:20 p.m. from principal to parent
- Email dated February 3, 2022 at 2:55 p.m. from principal to parent
- Email dated February 7, 2022 at 9:29 a.m. from principal to student
  Email dated February 7, 2022 at 11:07 a.m. from principal to student
- Email dated February 9, 2022 at 1:18 p.m. rom principal to parent and copied to school staff
- Email dated February 10, 2022 at 6:17 p.m. from principal to parent and copied to school staff
- Infinite Campus screenshots noting refusals to participate, come to class and take a quiz dated November 8, 2021; January 5, 2022; January 20, 2022;
- Behavior Contract November 10, 2021 (unsigned)
- IEP dated November 11, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Content (PWN) dated November 30, 2021
- Email dated January 7, 2022 at 11:55 from Ms. Feuerbacher to general education teachers in USD #111
- Formal Complaint filed by the parents on January 27, 2022
- Phone Log from Mr. Lackey dated February 2, 2022 and February 7, 2022
- Summary/Recommendations from the February 3, 2022 meeting with IEP team
- Notice of Special Education Meeting, dated February 3, 2022
- Response to the allegations dated February 17, 2022 written by Mr. Carter
- In-School Suspension (ISS) Expectations (undated)

Background Information

This investigation involves a 13-year-old female student who is eligible for special education and related services under the exceptionality category of Autism. The student lives at home with her family.

The student was initially evaluated and found eligible for special education and related services at age four under the exceptionality category of autism by the Cameron R-1 School District in Missouri. She received occupational therapy and specialized instruction for academics and social skills in a special education setting until the family relocated to Kansas when the student was in the second grade. She continued to be eligible for special education and related services in Kansas and received those services from the second through fifth grade at the Riverside Primary School in USD #114.

The student then attended sixth grade at the Doniphan Elementary School in USD #111 where both the parent and school district reported the student displayed significant behavioral concerns including "dumping, throwing and destroying items, eloping from her classroom as well as hitting and kicking staff. The student was reevaluated on December 9, 2019 including a Functional Behavior Assessment (FBA) and continued to be eligible for special education and related services under the eligibility category of autism. At that time, the student's IEP was reviewed and revised to include a Behavior Intervention Plan (BIP).

For the seventh grade, the student attended the Doniphan West Jr./Sr. High School in USD #111. Both the parent and district staff reported that the student was much more successful in the seventh grade and there were minimal behavioral incidents during that school year. The student's IEP was reviewed and revised and the BIP was removed.

The student is currently enrolled in the eighth grade at Doniphan West Jr./Sr. High School in USD #111 and continues to receive special education and related services.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of

noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised three issues that were investigated.

> ISSUE ONE: The USD #111, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parents with a copy of the Individualized Education Plan (IEP) in a timely manner during the 2021-22 school year.

Positions of the Parties

The parent alleged that USD #111 failed to provide her with a copy of the November 30, 2021 IEP until February 10, 2022, despite requesting it twice. The mother indicated she finally received a copy of the IEP as an email attachment after giving written consent for school documents, including the IEP, to be distributed electronically at the February 3, 2022 IEP team .

USD #111 reported the district's procedure and practice is to send a copy of the IEP to parents no later than ten school days following an IEP team meeting. School staff indicated that the IEP team meeting for the student was held on November 30, 2021 and a copy of that IEP was sent home with the student on December 10, 2021. In January 2022, the parent informed school staff that she had not yet received a copy of the IEP and requested another copy of the document. School staff responded by sending home another copy of the IEP with the student on January 24, 2022. The school staff reported the parent provided written permission for the district to send school documents electronically at the February 3, 2022 IEP team meeting and a third copy of the November 30, 2021 IEP was then provided electronically to the parent.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #111.

The DCEC #616 Mini-Handbook states that the completed IEP is to be turned into the district office and a copy sent home to the parent within ten school days following an IEP team meeting.

An IEP team meeting was held on November 30, 2021. The parent signed the Consent for Electronic Communication contained within the IEP document on that same date.

The special education teacher reported she updated the IEP paperwork to reflect the decisions made at the November 30, 2021 IEP team meeting and, per district procedures, she sent a completed IEP to the Doniphan County Education Cooperative # 616 (DCEC) on December 10, 2021. DCEC records show that the completed IEP was processed and locked into the electronic IEP system on December 13, 2021.

The special education teacher stated that her practice is to send a copy of the IEP home when she turns in the completed IEP to DCEC. For this reason, she believes that she sent a printed copy of the November 30, 2021 IEP home to the parent with the student on December 10, 2021. USD #111 acknowledged that there is no documentation showing that a copy of the IEP was provided to the parent on December 10, 2021.

The parent reported she did not receive a copy of the November 30, 2021 IEP and she contacted USD #111 January 13, 2022 to request a copy of the document. The January 21, 2022 teacher log states, "Left a message for the mother that I sent home student's IEP in December but I would be happy to get her another copy." The January 24, 2022 teacher log states, "I sent a copy of her IEP with her for mom" and "Tried to call mom again at 3:50 but she didn't answer." However, the parent reported she did not receive this copy of the IEP either.

The special education teacher acknowledged both printed copies of the November 30, 2021 IEP were sent home with the student and that a copy was never mailed to the parent. She also indicated that she was unable to email a copy of the IEP to the parent because consent to send school documents electronically had not yet been provided by the parent.

A meeting was held with the IEP team on February 3, 2022 to discuss the parent's allegations and attempt to find a resolution. The Summary/Recommendations notes

from that meeting reflect that USD #111 requested the parent give permission to receive the IEP via email and that the parent signed permission on February 3, 2022. The parent and district agree that the IEP and any other educational documents will be sent via email in the future. The parent acknowledged she received an electronic copy of the November 30, 2021 approximately one week following this meeting.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.322(f) and state regulations at K.A.R. 91-40-18(d) require that parents be provided with a final copy of the IEP at no cost. While there is no timeline specified in federal and state regulations, USD #111 has a written procedure for compliance with these requirements described DCEC #616 Mini-Handbook, which states that the completed IEP is to be turned into the district office and a copy sent home to the parent within ten school days following an IEP team meeting.

In this case the IEP team meeting was held on November 30, 2021 and a copy of the IEP should have been provided to the parent no later than December 14, 2021. USD #111 reported that a printed copy was sent home with the student per district procedure on December 10, 2021 ; however, the parent reported she never received this copy and USD #111 acknowledged that there is no documentation to show this copy was provided. According to the special education teacher, she chose to send a printed copy of this IEP home to the parent with the student because she believed she had not received signed consent to electronically provide a copy to the parent; however, documentation shows the parent signed the Consent for Electronic Communication contained within the IEP document on November 30, 2021.

On January 13, 2022, the parent reported she had not yet received a copy of the IEP and the special education teacher again chose to send a printed copy home with the student rather than mailing a copy to the parent. Even though there is documentation from the teacher indicating the printed copy of the IEP was sent home with the student on January 24, 2022, the parent reported she still did not receive a copy of the IEP.

On February 3, 2022 a meeting was held with the parent and IEP team. The parent again requested a copy of the student's November 30, 2021 IEP. USD #111 requested the parent provide written permission to send school documents electronically and the

parent provided this consent on that same date. The parent acknowledged she received an electronic copy of the November 30, 2021 IEP approximately one week following the February 3, 2022 meeting.

In this case, documentation and interviews found that USD #111 reported sending the printed copies of the November 30, 2021 IEP home with the student at no cost to the parent on December 10, 2021 and again on January 24, 2022; however, the parent reported that she never received these copies. Both the parent and the district acknowledged that an electronic copy of the student's November 30, 2021 IEP was provided to the parent at no cost following the February 3, 2022 meeting.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide the parent with a copy of the IEP at no cost. However, based on the undocumented and unreliable method used to send the IEP home with the student on two separate occasions, USD #111 is advised to review its written procedures and practices in regards to how parents are provided with their copies of IEPs at no cost within ten school days following the IEP team meeting.

ISSUE TWO: The USD #111, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically by not following the student's behavior intervention plan (BIP), during the 2021-22 school year.

Positions of the Parties

The parent alleged that the school district is not following the student's Behavior Intervention Plan (BIP) by assigning her discipline points that have led to her being assigned to after school detention, in-school suspension (ISS), out-of-school suspension (OSS), and a potential change of placement to an alternative school during the 2021-22 school year.

USD #111 contends they are complying with the student's BIP as written into the IEP dated November 30, 2021 which individualizes the interventions and consequences, but holds the student to the Doniphan West Jr./Sr. High School 2021-2022 Student

Handbook Expectations and Consequences. The district reported that guidance and support for the full implementation of the BIP is underway with Kansas Technical Assistance System Network (TASN). They met virtually on February 4, 2022 and were scheduled for an initial observation on February 15, 2022. The TASN consultant was sick on that date and rescheduled for February 22, 2022. Inclement weather and teacher illness caused USD #111 to reschedule the initial observation to March 11, 2022 with a post-observation conference with the parent and staff scheduled for March 15, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #111.

The findings of Issue One are incorporated herein by reference.

The student's December 7, 2020 IEP does not contain a BIP.

The Board of Education policy outlined in the Doniphan West Jr./Sr. High School 2021-2022 Student Handbook states, "All students must abide by policies adopted by the Board of Education." Further, the Board of Education "may authorize any certified employee to suspend or expel any student guilty of acts of behavior which interfere with the maintenance of a good learning environment."

The Code of Conduct states,

> Students are expected to be responsible for their own learning and to behave in a positive, responsible manner appropriate for the workplace. Students who take responsibility for doing their assigned work and meeting the school's behavioral expectations and attendance policies will maintain the privileges of all school activities.
>
> Students violating these expectations will be dealt with on an individual basis at the discretion of the administration. In addition to disciplinary actions taken by the principal or administrative designee, inappropriate acts considered to be against the law (weapons, assault, battery, tobacco,

> theft, etc.) will be reported to the appropriate law enforcement agency. Consequences for classroom behavior will be the responsibility of the individual teacher; however, if a student continues to misbehave after teacher intervention, the student will be referred to the office. Consequences for behavioral referrals may be detention, in-school suspension, or out-of-school suspension depending on the severity of the infraction and the number of previous infractions. A report of the referral and consequence will be sent to the parent/guardian either via student, phone or email.

The principal created an individualized behavior contract titled, "My Contract" for the student on November 10, 2021 that identified three goals. The first goal was for the student to follow through on all reasonable requests made by staff. The second goal was for the student to attend all classes and be present on time. The third goal was for the student to communicate her needs either verbally or in writing/typed. The consequences for not meeting the goals included: 1) not earning credit for in class work, 2) counting absences as unexcused, 3) after school time, 4) earning discipline points (with detention or suspension) and 5) not attending assemblies, field trips or other school activities. Earning eight discipline points would result in the student not being in good standing per the distinct policy and may result in the student being placed at the Riverside Alternative School.

A BIP was added to the student's IEP at the November 30, 2021 IEP team meeting that included the individualized behavior contract with the principal dated November 10, 2021 and incorporated the expectations and consequences of the Doniphan West Jr./Sr. High School 2021-2022 Student Handbook. The special education teacher, school psychologist, principal, student, and parent were participants in the development of the BIP.

The BIP developed at the November 30, 2021 IEP team meeting identified the problems behaviors as refusing to work, unpredictable verbal/nonverbal disruptions, and elopement. The functions of the behaviors were identified as escape or avoidance as well as sensory needs.

The replacement behavior was described as "the student will do as asked with minimal prompting or use calm words to request a break". The BIP listed eight interventions to address the target behavior:

1) provide preferential seating
2) make teachers aware of her disability
3) use the resource room or office to de-escalate the problem behavior
4) implement a behavior contract with the principal
5) discussion after an incident
6) use of social stories or programs such as Zones of Regulation
7) make up time she does not work in class
8) receive a choice of activity at the end of the day if she meets her behavior goals

The parent reported that she was provided a copy of the principal's individualized behavior contract ahead of the November 30, 2021 IEP team meeting; however she did not agree with the contract and voiced her concern with the team. The individualized behavior contract with the principal was not changed as a result of the IEP team meeting and both the parent and the student refused to sign the principal's individualized behavior contract at the IEP team meeting. The principal indicated that his understanding was that the parent did not have to agree to the individualized behavior contract, just be provided with a copy.

USD #111 presented the parent with Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Content (PWN) following the IEP team meeting. The PWN stated,

> To access grade level curriculum, the student needs accommodations and supports during assignments in the classroom and during testing situation. With these accommodations and supports, the student is able to academically participate with her general education peers.
> Due to the student's defined disability, the team agrees that not providing special education services would not meet her needs. The student will benefit from the special education supports provided in the general education classroom.

The student will receive 225 minutes per day in the General Education Classrooms to supplement her special education needs via accommodations and classroom support.
The student will receive 30 minutes per day in the IRC Classroom to reteach, review, and work on concepts taught in the general education classroom.

The PWN was signed by the parent on November 30, 2021.

Teacher notes reflect the student receiving preferential seating.

Staff reported that the Zones of Regulation has shown promise with the student, but there have been delays with consistent use. TASN has also provided resources and offered to assist with implementation.

The school staff acknowledged that social stories have not yet been implemented. However, at the parent request, USD #111 held a virtual meeting to discuss behavioral concerns and interventions with the Kansas Technical Assistance System Network (TASN) consultant on February 4, 2022. An onsite visit from TASN is scheduled to occur on March 11, 2022 after a number of cancellations due to inclement weather and illness. USD #111 reported that TASN will be assisting with social story development and use as required by the student's BIP.

Emails from the principal to the student and parent, the Counseling Contact Log dated October 4, 2021 through January 13, 2022, as well as the Behavior Detail Report dated December 3, 2021 through February 15, 2022 reflect instances of the student refusing reasonable requests by:

1) not going to her general education class, which resulted in an absence for that class period and an after-school detention and one discipline point for each instance
2) not attempting her classwork, which resulted in after-school detention to complete her assignments
3) not serving an ISS on December 3, 2021, which resulted in one day of OSS on that same date

There is no documentation to determine if the use of the resource room was for de-escalation or as part of her service minutes as specified in the November 30, 2021 IEP.

There is no documentation or staff report to determine if the student did not receive a choice of activity at the end of the day or did not meet her behavior goal.

The Summary /Recommendations from the February 3, 2022 meeting show that the IEP team reviewed the BIP and discussed revising it to align with restorative discipline principals. The team decided to focus on one goal: "The student will follow through on all reasonable requests made by staff". They further discussed and agreed that a 30 minute detention was a reasonable consequence for refusing reasonable requests. The IEP team agreed these revisions were acceptable as refinements and clarifications of the BIP. The Summary/Recommendations dated February 3, 2022 stated "The IEP Team agreed it was not necessary to amend the IEP at this time".

An email dated February 10, 2022 at 6:17 p.m. written by the principal to the parent summarized a plan that would allow the student to earn back points in smaller increments so she could achieve success more quickly.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a)(2)(ii) require school districts to develop an IEP which includes positive behavioral interventions, supports, and other strategies to address any behavior that impedes the learning of the student or the learning of others.

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) requires that school districts ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

Federal regulations, at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting. The changes may be made by the entire IEP Team at an IEP Team Meeting. Or the changes may be made without a meeting if the parent of a child with a disability and the school district representative both agree not to convene an IEP Team Meeting for the purposes of making the agreed upon changes and instead develop a written document to amend or modify the child's current IEP. In either case, the PWN requirements in 34 C.F.R. 300.503(a) must be met.

Federal regulations at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

In this case, the student's IEP did not include a BIP until November 30, 2021. Until that date, the student was subject to the district's school expectations as described in the student handbook.

The BIP included in the IEP dated November 30, 2021 listed eight specific interventions that were to be provided to the student to address the target behavior. USD #111 did provide several of the interventions including preferential seating, making teachers aware of the student's disability, making up missed class time after school, and implementing an individualized behavior contract with the principal. However, USD #111 provided inconsistent use Zones of Regulation and has not yet implemented the use of social stories. It is unclear if the resource room was used to de-escalate and if the student received a choice of activity at the end of the day.

Based on the foregoing a violation of special education statutes and regulations is substantiated for not implementing the student's IEP, specifically not implementing the BIP as required.

It is also noted that the IEP team reviewed and revised the student's IEP at the November 30, 2021 IEP team meeting by adding a BIP. However, USD #111 did not provide the parent with appropriate PWN of this proposed change to the provision of

FAPE to the student. As well, although the parent disagreed with the individualized behavior contract this was not recorded on the PWN. Based on the foregoing a violation of special education statutes and regulations is substantiated for failing to provide the parent with appropriate PWN when adding the BIP to the student's IEP and failing to respond appropriately to the parent request for changes in the individualized behavior contract following the November 30, 2021 IEP team meeting.

In addition, the BIP was reviewed and revised at the February 3, 2022 meeting with the parent. The revisions to the BIP included the behavior goal being changed to focus on only one behavior, determining that a 30-minute detention was an appropriate consequence for refusing a reasonable staff request, and allowing the student to earn back discipline points in smaller increments. However, USD #111 erroneously determined that it was not necessary to amend the BIP as a part of the IEP at this time. Based on the foregoing a violation of special education statutes and regulations is substantiated for not appropriately amending the BIP as part of the IEP.

ISSUE THREE: The USD #111, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically by not providing the accommodation for testing in a separate setting during the 2021-22 school year.

Positions of the Parties

The parent alleged that the accommodation for testing in a separate setting listed on the student's IEP was not routinely provided to her during the 2021-22 school year. She stated that her daughter was given the choice of going to the Instructional Resource Classroom (IRC) to take her tests/exams. The mother indicated that the accommodation applies to all tests/exams and the student should not have a choice of whether or not to take the test/exam in a separate setting.

The district responded that the classroom teachers always reminded the student that she may go to the IRC to take any exam, test or quiz. They acknowledged that the student sometimes declined this accommodation and that they honored her request.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #111.

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

The student's December 7, 2020 IEP states "Alternative setting for exams weekly in all areas starting on December 8, 2020 and ending on December 7, 2021".

The student's November 30, 2021 IEP states "Alternative setting for exams daily in all classes starting on November 30, 2021 and ending on November 29, 2022".

USD #111 did not provide any documentation to show that the student took exams in a separate setting from the beginning of the school year through November 30, 2021when the annual IEP was reviewed and revised. Documentation shows the student was frequently in the IRC, the designated alternative exam setting, but it does not specify that this was for exams. During the interview the LEA stated that it is a school practice to offer all students the option of taking exams in an alternative setting.

Between November 30, 2021 and March 11, 2022, Teacher notes show use of the accommodation on four occasions, December 3, 2021 during reading quiz; January 26, 2022 for a reading quiz; January 28, 2022 to make up missed Social Studies and Reading tests; and February 15, 2022 for a Social Studies quiz. Two other occasions were documented that she refused to go to Social Studies to pick up her test to take in the alternate setting on January 25, 2022 and February 15, 2022 a Science test was completed, but the location not noted.

The district reports the decision of the IEP team on February 3, 2022 was that the student would no longer be offered a choice of testing in the general classroom. This is consistent with the description of the alternative exam setting accommodation as described in the November 30, 2021 IEP.

Applicable Regulations and Conclusions

Federal regulations, at 34 C.F.R. 300.323(d)(2) and K.A.R. 91-40-16(b)(5) require that the IEP contain the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, the student's December 7, 2020 IEP and the November 30, 2021 IEP both included an accommodation requiring the student to take exams in an alternative setting. Neither IEP indicates that the student is allowed to choose whether or not to use this accommodation. While both parties agree that the alternative exam setting was offered, interviews and documentation showed that USD #111 did not consistently provide this accommodation as required by the student's IEP.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for not implementing the student's IEP, specifically not implementing the accommodations required by the IEP.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, USD #111 did not fully or consistently implement the BIP created at the November 30, 2021 IEP team meeting. In addition, USD #111 did not consistently provide the accommodation of the student taking all exams in an

alternative setting as required by both the December 7, 2020 IEP and the November 30, 2021 IEP.

B. Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) which require school districts to provide the parent with PWN a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

In this case, an IEP team meeting was held on November 30, 2021 and a BIP was added to the IEP to address targeted behavior. USD #111 failed to provide appropriate PWN proposing this change in the provision of FAPE to the student. It is also noted that during the IEP team meeting, the parent disagreed with the principal's proposed individualized behavior contract and the district failed to appropriately respond to her request for changes.

C. Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6), allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting.

In this case, USD #111 met on February 3, 2022 and the parent and school staff agreed to revise the student's BIP. However, the district erroneously determined that the BIP and IEP did not need to be amended.

Based on the foregoing, USD #111 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #111 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
    a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300. 300.323(c)(2) and state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) that require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in

accordance with the child's IEP.Implement the BIP as written and document its implementation by behavior.

b. Comply with federal regulations at 34 C.F.R. 300.503(a) which require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

c. Comply with federal regulations at 34 C.F.R. 300.324(a)(4) and 300.324(a)(6) which allow for changes to be made to the current IEP by amending the IEP rather than by redrafting the entire document either with or without an IEP Team Meeting.

2. It is noted that USD #111 has already addressed the identified noncompliance for implementing the student's IEP and BIP as written. On February 3, 2022, school staff and the parent met and agreed to no longer allow the student the choice of where to take exams; instead the student will consistently take exams in an alternative setting. In addition, USD #111 has already scheduled technical assistance with TASN for implementation of social stories and Zones of Regulation on March 11 and March 15, 2022. For these reasons, no individual corrective action regarding implementation of the IEP is being ordered at this time.
3. No later than March 31, 2022, USD #111 will arrange for TASN to provide training to school staff members of the student's IEP team, specifically the special education teacher and the LEA representative regarding the provision of appropriate PWN as well as the procedure to appropriately amend an IEP. No later than April 30, 2022, USD #111 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #111 will provide SETS with any handouts and/or a copy of the presentation.
4. Further, USD # 111 shall, within 10 calendar days of the date of this report, submit to 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 on 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Donna Wickham

Donna Wickham, Complaint Investigator

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290
ON FEBRUARY 23, 2022

DATE OF REPORT: MARCH 25, 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on March 18, 2022. On March 22, 2022, the investigator spoke by telephone with Dr. Joshua Robinson, Assistant Superintendent/Director of Special Education for the district.

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

- Staffing Record dated November 10, 2021
- Audio recording of the November 10, 2021 meeting
- Notice of Meeting mailed to the parent on November 23, 2021
- Notice of Meeting #1 mailed to the parent on December 1, 2021
- Email dated December 1, 2021 from the assistant director of special education to the parent
- Notice of Meeting #2 mailed to the parent on December 1, 2021
- Notice of Meeting hand-delivered to the parent on December 6, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 6, 2021
- Audio recording of the December 6, 2021 meeting
- Notice of Meeting hand-delivered to the parent on December 6, 2021
- Notice of Meeting mailed to the parent on December 8, 2021

- IEP for the student dated December 16, 2021
- Audio recording of the December 16, 2021 meeting
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 20, 2021

Background Information

This investigation involves a ten-year-old boy who is enrolled in the fourth grade in his neighborhood school. The student was diagnosed by Children's Mercy Hospital with Tourette Syndrome at the end of Kindergarten after having initially been determined to have a transient tic. Diagnoses of Anxiety, Attention Deficit Hyperactivity Disorder (ADHD), and Developmental Dyslexia were subsequently identified. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

Issue

In her written complaint, the parent presented one issue.

The IEP Team did not develop an IEP within 30 calendar days of determination of eligibility, which delayed my child's access to a free and appropriate public education (FAPE).

Applicable Statutes and Regulations

An eligibility determination team should try to reach consensus regarding an eligibility decision for a student. However, if the team cannot reach agreement, the final decision rests with the person who serves as the LEA (local education agency) representative at the eligibility determination meeting.

An IEP must be developed within 30 calendar days of a determination that the child is eligible for and needs special education and related services (K.A.R. 91-40-8(h)). That IEP must then be implemented within 10 school days after written parent consent is granted for the services in the IEP unless reasonable justification for a delay can be shown (K.A.R. 91-40-16 (b)(2)).

Parent's Position

It is the position of the parent that the district determined the student to be eligible for and in need of special education services on November 10, 2021 but did not develop an IEP for the student until December 16, 2021 and did not initiate service for the student until mid-January of 2022.

District's Position

It is the position of the district that the student was not determined to be eligible for and in need of special education services until December 6, 2021. According to the district, the parent was provided with a draft IEP one day after the student was determined to be eligible. The district asserts that the IEP was revised with input from the parent, finalized less than 30 days after the eligibility determination, and implemented on January 13, 2022 – less than 10 school days after the parent provided her written consent for the district's implementation of the IEP.

Investigative Findings

The student was first referred for special education evaluation by his parents in February 2021. The parents provided written consent for the evaluation on February 26, 2021. An eligibility meeting was held on May 18, 2021 at which time the district provided the parents with prior written notice that the student was not eligible for special education services.

The parent disagreed with the district's determination and on May 19, 2021 submitted a written request for an IEE (independent educational evaluation). On May 28, 2021, the district gave the parent written notice that her request for an IEE had been accepted. The district provided information regarding the district's criteria and procedures for IEEs.

On June 25, 2021, the parent sent an email to the assistant superintendent which addressed a number of topics including the names of individuals/ agencies that would be conducting the IEE which was scheduled to be completed on September 30, 2021.

The district received reports of the results of the cognitive portion of the IEE on September 20, 2021. Reports regarding the reading and language portions of the IEE were received by the district on October 14, 2021.

On October 27, 2021, the district mailed both parents notice of a meeting to be held on November 10, 2021 for the purpose of reviewing the results of the IEE and determining whether the student needed "special education services and/or supplementary aids in order to receive a FAPE [free appropriate public education]." A second notice regarding the meeting on November 10, 2021 was mailed to the parent on November 4, 2021.

Both of the student's parents were present for the November 10, 2021 meeting as were the assistant director of special education for the district, a special education teacher, an occupational therapist, a social worker, a school psychologist, a speech/language pathologist, and the student's general education teacher. A parent advocate joined the meeting via Google Meets.

According to the Staffing Record of the November 10, 2021 meeting, the group met to consider the IEE and to "review FAPE [free appropriate public education]." The Staffing Record shows that the group reviewed the IEEs conducted by the outside evaluators and "discussed whether [the student was] receiving FAPE." In an audio recording of the meeting, participants are heard discussing whether or not the student should be considered eligible for and in need of special education services.

According to the Staffing Record, "most team members determined [the student was] in need of specially designed instruction." Approximately three hours and twenty minutes into the audio recording of the meeting, the assistant director (who was the LEA representative for the meeting) stated that because so many of the participants felt that the student was in need of specialized instruction, she was making the decision to identify the student as exceptional.

The group can then be heard discussing timelines for an IEP Team meeting, noting that the IEP needed to be completed by no later than December 9, 2021 (thirty calendar days). The group spoke about timelines for presenting the parents with a draft of an IEP for the student which could be used as a basis for the IEP Team discussion at the next meeting.

On November 23, 2021, the district mailed the parent notice of a meeting to be held on December 6, 2021. The notice form stated that the meeting was to be held "to develop the individualized education program [IEP]."

A second notice regarding the meeting on December 6, 2021 was mailed to the parent on November 29, 2021. This notice also indicated that the meeting was to be held "to develop the individualized education program [IEP]" for the student.

According to the district, concerns began to surface among district team members that the team lacked all the information needed to address all the student's needs in the draft IEP. Specifically, staff members reported that they felt they were not able to gather the information they needed to adequately discuss all areas of possible special education eligibility and expressed concern about developing services and accommodations related to the student's social-emotional needs.

On December 1, 2021, the assistant director sent an email to the parent stating:

> I wanted to give you an update about the upcoming meeting. We have been gathering present levels of performance for (the student) for the team to discuss, and we have been trying to put together an addendum to the original eligibility report that encapsulates our conversation from the last time and also attempts to answer the qualifying questions for eligibility. There are still parts of eligibility the team has not discussed and eligibility has not been determined. We also have not signed any documents yet for eligibility. Eligibility is the first step in the process and will be the focus of our Monday (December 6, 2021) meeting. While (the special education teacher) has gathered present levels, there will not be an IEP to review until the team determines eligibility and completes that process. Since eligibility paperwork will be discussed and signed, we will also invite…the speech pathologist to the meeting.
>
> An agenda for Monday's meeting has been attached to this email.

According to the agenda, seven topics would be discussed.

- Purpose of the meeting;
- parent concerns;
- brief review of IEE (independent educational evaluation) from the previous meeting;
- discussion of present levels of performance in the area of social/emotional needs;
- discussion of present levels of performance in reading, math, and written language;
- discussion of eligibility questions (exceptionality and need); and
- final eligibility determination.

Also on December 1, 2021, the district mailed the parent a new notice regarding the December 6, 2021 meeting which stated that the meeting would be held not only for the purpose of developing an IEP for the student but also to "review the evaluation and determine eligibility."

On December 2, 2021, the parent sent an email to the assistant director stating:

> We object to revisiting the issue of Eligibility for Special Education for [the student]. As the LEA Rep at that meeting, you are on record as confirming that [the student] *is* eligible for Special Education. After extensive discussion, as well as repeated efforts by our Advocate to refer to and apply the Eligibility Indicators from the KSDE Handbook, when asked one by one, 8 of the 10 members of the team did say they were in favor of qualifying [the student] for Special Education Eligibility. At that point, as the LEA Rep, you confirmed that determination…
>
> The team then went on to discuss areas of concern to be addressed in the next meeting at which the IEP would be addressed, and the discussion focused on his ability to compose a written paragraph, and at what point an intervention would begin…

On December 3, 2021, the assistant director sent the parent an email stating:

> I appreciate your viewpoint and I understand your frustration. Through our gathering of present levels, there is simply not enough feedback from the team yet to complete the eligibility report. We are particularly interested in discussing the social emotional section and whether he might qualify for any services in that area. Discussing the social/emotional aspect of [the student's] testing and present levels needs to be an item of discussion before we move forward in the process.

The parent responded via email on December 3, 2021 stating:

> As far as extending any discussion about eligibility, we are more than happy to consider adding an additional area of eligibility relevant to [the student's] Social-Emotional levels.

> However, the team at the 4-hour Eligibility Meeting on November 10, 2021, determined [the student's] eligibility under the Eligibility Indicators for Specific Learning Disability, with needs demonstrated in Reading and Writing. We are not willing to consent to exiting him from that eligibility and expect that regardless of any other determination we may add, we will be working as a team on Monday morning to develop an appropriately ambitious IEP with services, supports, and accommodations relative to [the student's] already determined eligibility.

A third notice of the meeting on December 6, 2021 was mailed to the parent on December 1, 2021. According to this notice, the meeting was "to review the evaluation and determine eligibility" as well as "to develop the individualized education program [IEP]." A fourth notice of the December 6, 2021 meeting was hand delivered to the parent on December 6, 2021.

The Staffing Record from the December 6, 2021 meeting shows that the purpose of the meeting was "eligibility." According to the record, the school psychologist stated at the beginning of the meeting that the team was "continuing eligibility discussion."

Discussion of academic present levels was deferred at the request of the parent advocate to allow the team to answer the question of the student's eligibility for special education services.

On an audio recording of the meeting on December 6, 2021, the team can be heard discussing the student's eligibility for special education services under the category of Other Health Impaired. As the meeting concluded, participants spoke about dates for a future meeting for the purpose of IEP development.

The district told the parent that a draft IEP could be sent to her on December 7, 2021 and proposed December 8, 2021 as the date for the IEP team meeting. On the audio recording, the parent can be heard telling the district that she was not sure she would be available for a meeting on that date since she would have to take more time off work to attend. The school psychologist suggested that the parties discuss a second optional date should December 8, 2021 prove unworkable. December 16, 2021 was agreed upon as the back-up date.

On December 6, 2021, the parent was provided with a notice of meeting for December 8, 2021for the purpose of developing the IEP for the student.

On December 6, 2021, the district also provided the parent with a prior written notice stating that "it was agreed upon at the 11/10/21 meeting that [the student] meets eligibility criteria for Specific Learning Disability."

The district sent a draft of a proposed IEP for the student to the parent on December 7, 2021.

The parent was not able to take a second day off work to attend a second meeting during the week of December 6, 2021, so the meeting was moved to the back-up date of December 16, 2021. On that date, 36 calendar days after the district determined that the student was determined to be eligible for special education services under the category of Specific Learning Disability, the team met to develop an IEP with input from the parent.

A copy of the IEP developed by the team at the December 16, 2021 meeting was sent electronically to the parent on December 20, 2021 shortly before the start of Winter Break on December 23, 2021. A paper copy of the IEP was sent home to the parent in the student's backpack.

On December 20, 2021, the district also provided the parent with prior written notice of its proposal to provide the student with special education services.

The parent reviewed the IEP and on January 3, 2022 sent an email to the special education teacher to request additional changes to both the IEP and the prior written notice document.

Revisions were sent to the parent on January 4, 2022. On January 7, 2022, the parent sent the special education teacher an email with additional changes to the IEP.

The parent provided written consent for the implementation of the district's proposed special education services on January 8, 2021. Those services included the following:

- Pullout reading instruction within the special education classroom for 30 minutes 4x/week and 15 minutes 1x/week;
- pullout social skills instruction within the special education classroom for 20 minutes 1x/week;
- pullout movement breaks for 4 minutes on an hourly basis 5x/week; and
- consult services between the special education teacher and the general education teacher for 5 minutes 1x/week to discuss [the student's] needs and compile weekly data.

The district was prepared to begin implementing these services on January 10, 2022, but the student had been exposed to Covid-19, was quarantined, and did not return to school until January 13, 2022 at which time special education services were initiated.

Summary and Conclusions

On November 10, 2021, a meeting was held to review the results of an IEE requested by the parent. At the conclusion of that meeting, the assistant director of special education stated that while there was not unanimous agreement among the team regarding the student's eligibility for special education, she – as the LEA representative – had determined that the student was eligible under the category of Specific Learning Disability.

As the meeting concluded, the participants discussed the scheduling of another meeting for the purpose of developing an IEP for the student within a 30-calendar day timeline. An IEP meeting was scheduled for December 6, 2021 – three days prior to the 30-day deadline of December 9, 2021.

On December 1, 2021, the district changed course and determined that the December 6, 2021 meeting should be used for additional discussion of the student's eligibility under the category of Other Health Impaired.

At the December 6, 2021 meeting, there was no discussion regarding the development of an IEP. The district proposed that an IEP team meeting be held on December 8, 2021, but the parent was not able to take off work for a second meeting that week, so the IEP meeting was scheduled for December 16, 2021 – 36 calendar days after the student had been determined to be eligible for and in need of special education services.

On December 6, 2021, the district provided the parent with prior written notice that the student had – on November 10, 2021 – been determined to be eligible for and in need of special education services under the category of Specific Learning Disability.

On December 20, 2021, the district provided the parent with an IEP based on the discussion during the December 16, 2021 meeting. The district continued to revise that IEP based upon input from the parent through January 7, 2022. The parent provided written consent for the implementation of the IEP on January 8, 2022, and services to the student were initiated on January 13, 2022 – 4 school days after written

parental consent was obtained and the same day the student returned to school following a Covid-19 quarantine.

The district responded in a timely fashion by providing special education services to the student after receiving parent consent for the implementation of those services. However, the student's IEP was not completed until nearly 63 calendar days (33 school days) after the decision was made that he was eligible for special education services. While special education statutes and regulations do not prohibit a district from considering a student's eligibility for special education services under multiple categories, the decision by a team that a student is eligible under ***any*** category marks the beginning of a 30-calendar day timeline for the district to develop an IEP for the student. The prior written notice document which the district provided to the parent on December 6, 2021 confirms that the student's eligibility for special education services under the category of Specific Learning Disability was established on November 10, 2021.

Neither the continued eligibility discussion on December 6, 2021 nor the district's development of a draft IEP serve to extend the 30-calendar day timeline. IEPs are to be developed by a team that includes the student's parents. In this case, IEP development by the student's IEP team did not ***begin*** until 36 days after eligibility was determined, and the IEP was not finalized for another three weeks. It was incumbent on the district to schedule any further eligibility meetings and IEP meetings ***within*** the 30-calendar day period immediately after the student's eligibility was first determined.

The audio recording of the November 10, 2021 meeting shows that the team was well aware that the student's IEP needed to be in place by December 9, 2021 and that the Thanksgiving Break fell within the 30-day period, but by scheduling the next team meeting on December 6, 2021, the district left itself with little to no room to guarantee completion of an IEP within the required timeline. As a result, the first IEP offered to the parent was offered on December 20, 2022, seven school-days beyond the required timeline.

Because the district failed to develop an IEP for the student within 30-calendar days of the date that his eligibility for special education services was determined, a violation of special education statutes and regulations is substantiated. The corrective actions for this violation are specified in the following section of this report. The corrective actions do not include any requirement to offer compensatory services because the services offered in the initial IEP proposal were not destined to receive parent consent even if the required timeline had been met. After the initial IEP proposal, the parent extended

negotiations for a significant period of time. The IEP was offered on December 20, 2022. Fifteen days later, on January 3, 2022, the parents requested additional changes to the IEP and to the Prior Written Notice. School officials responded the very next day, on January 4, and on January 7, the parent again requested additional changes to the proposed IEP. The district responded immediately and the parent provided consent to the proposed IEP on January 8, 2022. These extended negotiations were initiated by the parent to address their legitimate continuing concerns, but also resulted in a delay in providing the consent that was necessary in order for the district to begin services.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations on an issue presented in this complaint. Specifically, a violation was substantiated with K.A.R. 91-40-8(h) which requires that a district develop an IEP within 30 calendar days of the determination that a student is eligible to receive special education services.

Therefore, USD #290 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.A.R. 91-40-8(h) by ensuring that an IEP is developed within 30 calendar days of the determination that a student is eligible to receive special education services.

2) a) Within 40 calendar days of the date of this report, USD #290 shall develop and submit to SETS for approval, written guidelines for staff to follow with regard to a parent request for an IEE which include timelines for developing an IEP if the IEE review results in a determination that a student is eligible for special education services.

   b) Once the guidelines described above under Item a) have been approved by SETS, USD #290 must within 20 school days after SETS approval submit to SETS a plan for the training of staff on these guidelines.

   c) Upon completion of training of identified staff, USD #290 shall submit to SETS a record showing the dates of training and an attendance log signed by all staff who participated in the training.

3) Further, USD #290 shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.
For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.
Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or

others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2).

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #394
ON MARCH 1, 2022

DATE OF REPORT MARCH 31, 2022

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

The complaint is against USD #392 (Rose Hill Public Schools) who contracts with the Butler County Special Education Interlocal #638 (BCSBC) to provide special education and related services to students enrolled in USD #392. In the remainder of the report, "USD #392," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible public agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on March 1, 2022 and the 30-day timeline to investigate this complaint ends on March 31, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on March 4, 2022 and again on March 25, 2022.

USD #392 made the following school staff available for a telephone interview on March 22, 2022:

- Lisa Arndt, Assistant Director of Special Education for BCSBC
- Rachel Dalinghaus, Assistant Principal for Rose Hill Primary School
- Cynthia Shavlik, First Grade Classroom Teacher

- Shannon Johnson, School Nurse
- Terri Reilly, Principal for Rose Hill Primary School
- Hannah Price, School Psychologist
- Matthew Neal, School Resource Officer (SRO)
- Courtney Edge, Social/Emotional Learning (SEL) Coordinator

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Email dated July 2, 2020 at 3:12 p.m. written by the mother to Courtney Edge who was the school psychologist at Rose Hill Elementary School during the 2020-21 school year
- Email dated August 24, 2020 at 5:04 p.m. written by Ms. Edge to the mother
- Email dated August 24, 2020 at 5:21 p.m. written by the mother to Ms. Edge
- Communication Log entry dated December 10, 2021 handwritten by the mother
- Communication Log entries dated January 18 and 25, 2021 handwritten by the mother
- Communication Log entries dated February 2, 4, 5, 7, 8 and 23, 2021 handwritten by the mother
- Communication Log entries dated March 9, 23, and 25, 2021 handwritten by the mother
- Email dated April 23, 2021 at 11:20 a.m. written by the mother to Terri Reilly, principal at Rose Hill Elementary School
- Email dated April 23, 2021 at 11:44 a.m. written by Ms. Reilly to the mother
- Email dated April 25, 2021 at 3:53 p.m. written by Ms. Reilly to Jennifer Jones, the kindergarten teacher; Ms. Edge; Michelle Neal, the district social worker; Rosemary Klish, the school counselor, and Hannah Price, the school psychologist intern to Ms. Edge during the 2020-2021 school year
- Resource List date May 15, 2021for comprehensive evaluation/psych evaluation, therapy, and case management provided by Ms. Neal
- Kindergarten grade card
- End of Year AIMSweb Early Literacy Report for kindergarten
- Communication Log entries dated
- Communication Log entry dated August 9, 2021handwritten by the mother

- Daily Report written by Cynthia Shavlik, First Grade Classroom Teacher, dated between August 12, 2021 and November 18, 2021
- SeeSaw communication log dated August 13, 2021 through March 4, 2022 between the mother and Ms. Shavlik
- Email dated August 24, 2021 at 5:47 p.m. written by the mother to Hannah Price, the school psychologist at Rose Hill Elementary School during the 2021-22 school year
- Email dated August 25, 2021 at 7:02 a.m. written by the mother to Ms. Reilly
- Email dated August 25, 2021 at 10:04 a.m. written by Ms. Reilly to the mother
- Email dated August 25, 2021 at 11:30 a.m. written by the mother to Ms. Reilly
- Email dated August 25, 2021 at 3:00 p.m. written by Ms. Price to the mother
- Email dated August 25, 2021 at 5:29 p.m. written by Ms. Reilly to Ms. Price and copied to the mother
- Email dated August 25, 2021 at 5:44 p.m. written by the mother to Ms. Reilly and Ms. Price
- Prior Written Notice (PWN) for Initial Evaluation and Request for Consent dated August 26, 2021
- Email dated August 27, 2021 at 1:19 p.m. written by Ms. Reilly to the mother
- Email dated August 27, 2021 at 1:42 p.m. written by the mother to Ms. Reilly
- Email dated September 7, 2021 at 3:47 p.m. written by Ms. Shavlik to the mother
- Email dated September 9, 2021 at 8:29 a.m. written by Ms. Price to the mother
- Email dated September 9, 2021 at 7:18 p.m. written by the mother to Ms. Price
- Email dated September 10, 2021 at 10:43 a.m. written by Ms. Price to the mother
- Email dated September 10, 2021 at 11:46 p.m. written by the mother to Ms. Price
- Emergency Safety Intervention Log entry dated September 20, 2021
- Email dated September 21, 2021 at 5:13 p.m. written by the mother to Ms. Reilly
- Social / Medical History completed by the parents
- Notice of Meeting dated October 25, 2021 scheduling an evaluation review and eligibility determination meeting for November 1, 2021 at 2:45 p.m.
- Evaluation and Eligibility Report dated November 1, 2021
- Staffing Committee Report dated November 1, 2021

- PWN for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated November 1, 2021
- General Education Functional Assessment / Behavioral Assessment
- Email dated November 2, 2021 at 12:15 p.m. written by the mother to Ms. Price
- Notice of Short-term Suspension resulting from informal hearing with Mrs. Reilly on November 8, 2021
- Student Support Team General Education Interventions Referral Form dated November 9, 2021
- Letter dated November 12, 2021 written by Ms. Reilly to the parents documenting intervention strategies
- Letter dated November 12, 2021 written by Ms. Reilly to the parents initiating the child study team process
- Email dated November 15, 2021 at 1:50 p.m. written by Ms. Reilly to the mother
- Email dated November 15, 2021 at 2:17 p.m. written by the mother to Ms. Reilly
- Email dated November 15, 2021 at 5:54 p.m. written by Ms. Reilly to the mother
- Email dated November 20, 2021 at 8:59 p.m. written by Ms. Reilly to the mother
- Daily Schedule Notes dates between November 22, 2021 through March 11, 2022
- Email dated November 30, 2021 at 8:34 a.m. written by Ms. Reilly to Randall Chickadonz, Superintendent of USD #394
- Letter dated January 7, 2022 written by Ms. Reilly to the parents scheduling a parent meeting for January 21, 2022 at 2:30 p.m.
- Notice of Short-term Suspension resulting from informal hearing with Mrs. Reilly on January 12, 2022
- Email dated January 12, 2022 at 2:11 p.m. written by the mother to Ms. Price and Ms. Reilly
- Email dated January 13, 2022 at 5:09 p.m. written by Ms. Price to the mother
- Email dated January 17, 2022 at 5:04 p.m. written by the mother to Ms. Price
- Email dated January 14, 2022 at 3:14 p.m. written by the mother to Ms. Price
- Communication Log entry dated January 15 and 18, 2022 handwritten by the mother
- Email dated January 20, 2022 at 10:12 a.m. written by the mother to Ms. Price
- Email dated January 24, 2022 at 12:53 a.m. written by the mother to Ms. Price
- Email dated January 24, 2022 a5 1:48 p.m. written by Ms. Price to the mother

- PWN for Reevaluation and Request for Consent dated January 20, 2022
- Communication Log entries dated February 4 through February 8, 2022 handwritten by the mother
- Daily Schedule Notes dated February 7, 8, 9 and 14, 2022
- Communication Log entry dated February 9, 2022 handwritten by the mother
- Email dated February 9, 2022 at 10:51 a.m. written by the mother to Ms. Price
- Notice for use of Emergency Safety Intervention (ESI) dated February 9, 2022
- Email dated February 10, 2022 at 12:04 p.m. written by the mother to Cynthia Shavlik, the student's first grade teacher
- Notice for use of ESI dated February 14, 2022
- Email dated February 14, 2022 at 11:46 a.m. written by the mother to Ms. Price
- Notice of Short-term Suspension resulting from informal hearing with Mrs. Reilly on February 14, 2022
- Email dated February 15, 2022 at 7:49 a.m. written by Ms. Reilly to Ms. Shavlik, Ms. Price, and Ms. Edge
- Email dated February 19, 2022 at 3:58 p.m. written by Ms. Reilly to the child study team
- Email dated February 23, 2022 at 5:09 p.m. written by the mother to Ms. Shavlik
- COMECARE Treatment Note dated February 25, 2022 at 2:45 p.m.
- Communication Log entry dated February 25, 2022 handwritten by the mother
- Email dated February 25, 2022 at 4:57 p.m. written by Michelle Schrama, Rose Hill District Social Worker, to the mother
- Email dated February 25, 2022 at 6:04 p.m. written by the mother to Ms. Reilly
- Email dated February 26, 2022 at 3:26 p.m. written by the mother to Ms. Reilly
- Email dated February 28, 2022 at 1:00 p.m. written by the mother to Ms. Reilly
- Email dated February 28, 2022 at 2:14 p.m. written by Ms. Reilly to the mother
- Email dated March 1, 2022 at 5:14 p.m. written by Ms. Reilly to the mother
- Email dated March 8, 2022 at 8:01 a.m. written by Ms. Price to the mother
- Communication Log entry dated March 9, 2022 handwritten by the mother
- Response to the Allegations dated March 10, 2022 written by Lisa Arndt, Assistant Director of Special Education at BCSBC
- Communication Log entry dated March 23, 2022 handwritten by the mother
- Screenshots of the 2021-22 Student Attendance Record in the district's student information system

- Student Attendance Record for the 2021-22 school year
- Timeline of Events created by USD #394
- Log Entries in the student information system dated between September 17, 2020 and March 4, 2022
- Blank copy of a behavior data collection sheet and weekly rewards sheet
- Grade Report for Quarter 1, Quarter 2, and Quarter 3 of First Grade
- Report of Psychological Evaluation dated March 21, 2022 written by Sarah Coleman, Licensed Psychologist
- Email dated March 28, 2022 at 10:26 a.m. written by the mother to the Complaint Investigator

Background Information

This investigation involves a 6-year-old female student enrolled in the first grade at Rose Hill Elementary School in USD #394. She is currently being evaluated to determine eligibility for special education and related services. The student lives at home with her parents and siblings.

The student began attending preschool at age three in Trenton, Illinois. The family moved to Haysville, Kansas when the student was four and she was enrolled in preschool at Nelson Elementary School in USD #261. Per parent report, the student was not evaluated for early childhood special education and did not have a written intervention plan at school; however, she did receive interventions in the general education setting including a staff member being within arm's reach at all times and counseling through the Kansas Children's Service League because of behavioral concerns.

The family then moved into the USD #394 school district and the student was enrolled in kindergarten at Rose Hill Elementary School during the 2020-21 school year. She and her peers attended school that year moving between in-person and remote instruction. The student was promoted to first grade for the 2021-22 school year and has attended school in-person throughout the current school year.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parents raised three issues that were investigated.

> ISSUE ONE: The USD #394, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate child find procedures when it failed to suspect the student was a student with a disability during the past 12 months.

Positions of the Parties

The parents reported they have shared their concerns about the student's executive functioning skills, emotional regulation, impulse control, social skills, and pragmatic language with the staff at Rose Hill Elementary School on multiple occasions since the student was first enrolled in kindergarten in August 2020. Despite repeated incidents in kindergarten and first grade of the student hurting herself, staff, and/or peers; eloping from the classroom and the school building; destroying property; eating metal and plastic objects; and having dysregulation/meltdowns/ tantrums resulting in her peers being evacuated from the classroom, USD #394 has failed to suspect that the student may be a student with a disability and to provide appropriate interventions and supports to the student during the past 12 months. The parents believe this failure has negatively impacted both the student's learning as well as the learning of her grade-level peers.

USD #394 reported that it has followed the appropriate child find procedures during the past 12 months. The district first learned of the parent's concerns through an email sent during the summer prior to the student's initial enrollment in kindergarten. The parents shared that the student was receiving counseling in the preschool program in USD #261 but that the student did not have an IEP. The parents indicated USD #261 was attempting the counseling as an intervention prior to testing the student for eligibility for special education.

USD #394 reported the student was successful in kindergarten and made academic gains. School staff indicated there were only a few incidents at the end of that school year that required additional staff to assist in the classroom due to the student's inappropriate behavior, specifically stating,

> The SEL coordinator was called once when the student was being non-compliant. The other time was when the teacher was absent and there was a substitute teacher. This was in May 2021 and the student began to struggle with that change. There was one incident in May when the student ran out of the building and down towards a pond next to the elementary building.

In addition, USD #394 reported that the student was evaluated at the parent's request during the first quarter of first grade; however, the student was determined to not be eligible for special education and related services at that time. Instead, USD #394 developed a general education behavior plan and continued general education interventions through the child study team process. USD #394 reported the parent requested another special education evaluation in January 2022 and that reevaluation is currently in process.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #394.

On July 2, 2020 at 3:12 p.m., the mother sent an email to Ms. Edge indicating that the student would be attending kindergarten and was receiving counseling in the preschool program at USD #261 through a grant. The parent reported that the student did not have an IEP because the district was attempting the counseling as an intervention before proceeding to a special education evaluation.

The mother has kept a handwritten log of communications with the district since the student enrolled in USD #394. This communication log documents that Jennifer Jones, the kindergarten teacher, contacted her on December 10, 2020 to discuss concerns related to lying and destruction of property in the classroom. Ms. Jones contacted the mother again on January 15, 2021, and indicated that the student's inappropriate

behaviors were increasing in the classroom and the previous redirection techniques were no longer working. Ms. Jones also reported that the student had been disruptive in the physical education class and had possibly eaten some wire. The parents indicated that x-rays at urgent care that evening had confirmed the student had eaten wire causing stomach upset.

On January 18, 2021, the mother asked Ms. Jones if the school had received any information from USD #261 regarding the counseling services provided when she attended the preschool program. The parent indicated she would like this information to be considered "along with an evaluation to help with her impulsiveness and frequent outbursts." The communication log shows Ms. Jones would "pass on the information."

Ms. Jones contacted the mother on January 25, 2021 to inform her that "it was a hard day, hitting other students with items, being disruptive, disrespectful, screaming while Ms. Reilly was in the classroom, destroying property. The student missed computer lab time in order to calm down."

On February 2, 2021, Ms. Jones stated, "the student is showing increased behaviors, work refusal, disrespect, and tantrums." Ms. Jones informed the mother that any homework assigned to the student was work that she had refused to do in class with assistance.

The communication log shows Ms. Jones informed the mother the student was so disruptive that she had to be removed from the classroom by the school counselor on February 4, 2021. The next day, Mrs. Jones reported the student pulled a peer's hair because that child stood too close to her in line and that the student purposefully destroyed her own shoes. The February 7, 2021 communication log entry reflects the parent letting Ms. Jones know about the student being upset that her peers were calling her "ugly" and an "idiot."

On February 8, 2021, Ms. Jones told the mother that the student was extremely disrespectful and, when ignored, escalated her behavior to get a reaction. The student then destroyed her supplies in the classroom. On February 23, 2021, the student

refused to work and ripped up her worksheets and a second set was sent home as homework.

On March 9, 2021, Ms. Jones notified the mother that the student "really struggled in PE/Gym and was trying to hurt others." Ms. Jones indicated the student also scratched her own face, tried to eat snack wrappers, and had a disruptive outburst in the classroom on that same date. Ms. Jones reported the student picked at her skin until it bled and eloped from the classroom on March 23, 2021. On March 25, 2021, the mother was notified of the student taking a lunch in the cafeteria, refusing to eat, and subsequently throwing and dumping the food on purpose.

On April 23, 2021, the student received one day of out-of-school suspension (OSS) due to "disruptive and unsafe choices" caused by her noncompliance in the kindergarten classroom and elopement from the school building in order to cross the street and reach a pond near the school grounds.

The mother emailed Ms. Reilly on that same date at 11:20 a.m. stating,

> I understand she eloped again today and left the school grounds. The increase in eloping and the ability to get further away from where she's supposed to be and leave school grounds even with a broken leg is an obvious concern. And she has a bruise on her face that wasn't there this morning when she went to school she can't seem to tell us how it got there. We have had a number of conversations with her about following instructions and making safe choices.
> I think it's time to have a conversation/meeting about considering looking at possible interventions to ensure she is safe and able to be productive in her class work and not disrupt other students.

Ms. Reilly responded via email at 11:40 a.m. that a meeting would be scheduled.

The communication log dated April 23, 2021 stated,

> Request made to teacher and admin (Ms. Reilly) for a meeting to evaluate the need for additional supports in light of increased behavior and eloping off campus to the pond with a broken leg. *No response for an evaluation - agreed to a meeting.

Ms. Reilly sent an email to Ms. Price, Ms. Edge, Ms. Klish, Ms. Neal and Ms. Jones on April 25, 2021 regarding the incident which occurred on April 23 and the parent's request for a meeting. The email stated,

> One of Mrs. Jones' std [students] has had difficulty with her behaviors the past few weeks . . . I believe a big variable has been the absence of Mrs. Jones due to her need to be absent with her recent surgery; however, the last incident on Fri. [Friday] prompted Mom to request a team mtg. [meeting] to discuss additional interventions/strategies for her and her safety (eloping) . . . the young lady does not have an IEP and seems to be pretty on target with her academics from my limited interaction with her on academics (I could be incorrect though – we'll get that info from Mrs. Jones). She did have behaviors last year (per mom's input).

The kindergarten grade card shows the student met six of seven reading standards (cannot produce letter sounds); four of five math standards (cannot decompose numbers up to ten in different ways); two of five kindergarten standards (cannot cut on a line, name 11 basic colors, or name the days of the week); eight of nine work habits standards (cannot work neatly); and did not meet the speaking and listening standard (cannot speak clearly to share my thoughts, ideas, and feelings).

The communication log documents a meeting was held on May 5, 2021. School staff reported that the student's behavior had improved since Ms. Jones had returned from leave. The log reflects USD #394 recommended private therapy. The mother stated that she again shared her ongoing concerns with the student's behavior since returning to in-person learning at the meeting and that she wanted interventions and supports for the student. USD #394 reported that no notes were kept from this meeting.

The communication log for May 11, 2021 documents that the student lied at school, lost her shoes and blamed another student in her class, and threw a fit.

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On May 14, 2021, Michelle Neal, the social worker for USD #394 provided the parents with a list of possible resources via email including military resources, therapists, and possible options for a psychological evaluation as well as the contact information for

South Central Mental Health Center (SCMHCC) who could provide attendant care and case management services if the student were to qualify for their program. Ms. Neal wrote, "I hope that this is helpful as you explore ways to help bring the student to a better place emotionally."

The mother reported the student began therapy during the summer of 2021. The student was also placed on the waiting list for a neuropsychological evaluation in spring 2022 to determine if the student met the criteria for a diagnosis of autism spectrum disorder.

On August 24, 2021, the mother sent a letter to Ms. Price indicating her belief that the student's behavior was interfering with her ability to learn in the general education setting. The parent listed the following difficulties to support her concern: 1) she is often not cooperative in class. 2) she needs assistance to distinguish between socially acceptable and unacceptable behavioral responses to various situations and environments; 3) she does not recognize situations where her self-control is needed; 4) she does not know how to cope with stress-provoking situations she cannot avoid; and 5) she does not understand the consequences of appropriate and inappropriate expressions of her feelings. She specifically requested a functional behavioral assessment as required by the IDEA and a behavior intervention plan for the student. The mother requested the evaluation be expedited "as the student has already had a number of incidents, including one eating an object at school and needing to go to urgent care on August 24, 2021."

The parent was provided with a Prior Written Notice (PWN) for an Initial Evaluation and Consent on August 26, 2021 in response to her written request for an evaluation.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.111 require school districts to identify, locate and evaluate all children with disabilities who are in need of special education and related services, regardless of the severity of their disability, including children who are suspected of being a child with a disability even though they are advancing from grade to grade.

In this case, the parent alerted USD #394 of the counseling intervention used in the USD #261 preschool setting during the 2019-20 school year upon the student's enrollment in kindergarten. The student attended kindergarten during the 2020-21 school year through a combination of remote and in-person learning.

In December 2020, Ms. Jones reported one instance of problem behavior including destruction of property and lying in the general education setting. In January 2021, Ms. Jones reported two instances of problem behaviors including hitting other students, being disruptive, disrespectful, screaming, destroying property, and eating wire.

Ms. Jones reported four instances of problem behavior including destruction of property, physical aggression towards peers, work refusal, disrespect, and tantrums during February 2021. In March 2021, Ms. Jones shared three instances of problem behaviors including physical aggression towards peers, self-harm, disruptive outbursts in the classroom and cafeteria, elopement from the classroom, and eating foreign objects (snack wrappers).

The student was out-of-school suspended on April 23, 2021 because of "disruptive and unsafe choices" caused by her noncompliance in the kindergarten classroom and elopement from the school building in order to cross the street and reach a pond near the school grounds. On that same date, the mother made a written request to the building principal to hold a meeting to consider looking at possible interventions to ensure the student is safe and able to be productive in her class work and not disrupt other students.

That meeting was held on May 5, 2021with the classroom teacher, the school counselor, the school psychologist, the building principal and the school social worker and mother in attendance. During this meeting, the mother reported she again shared her ongoing concerns with the student's behavior since returning to in-person learning and that she wanted interventions and supports for the student. The mother reported that the school staff indicated that the student's behavior had improved since Ms. Jones had returned from leave and the kindergarten grade card showed the student was making academic progress towards the kindergarten standards. As a result of this meeting, USD #394 recommended private therapy and provided the parent with a list

of resources to obtain therapy, a psychological evaluation, and case management for emotional issues.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to suspect the student was child with a disability at the May 5, 2021 meeting with the parent in light of the increase in the frequency, duration, and intensity of the problem behaviors in kindergarten over the course of the second semester combined with the fact that the student previously received counseling as a general education intervention at the age of four in the preschool setting even though the kindergarten grade card showed the student was making academic progress.

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, unless there are unusual circumstances.

On January 18, 2021, the mother made a verbal request to Ms. Jones for an evaluation to help develop interventions and supports to address the student's impulsiveness and frequent outbursts. There is no documentation to show USD #394 responded to this parent request.

On May 5, 2021, the mother met with the classroom teacher, the school counselor, the school psychologist, the building principal and the school social worker to discuss the increase in the frequency, duration, and intensity of problem behaviors at school during the second semester. During this meeting, the mother reported that she again requested an evaluation to determine what interventions and supports were needed for the student. USD #394 responded by providing the parents with a list of resources to obtain therapy, a psychological evaluation, and case management for emotional issues.

On August 24, 2021, the mother sent a written request for an evaluation to the building principal. She specifically requested a functional behavioral assessment as required by the IDEA and a behavior intervention plan for the student. Documentation shows the district responded on August 26, 2021 by providing the parent with a PWN for Initial Evaluation and Consent.

In this case, USD #394 failed to respond appropriately to the mother's verbal request for an initial evaluation for special education for her child on January 18, 2021 and again on May 5, 2021. On both of these dates, while the mother did not specifically state that she wanted an evaluation for special education, she did express wanting an evaluation to determine interventions and supports to address the increase in frequency, duration, and intensity of the problem behaviors occurring in the school setting. The district did not respond by providing a PWN to respond to either of these requests. There were no unusual circumstances that would justify a failure to provide a PWN to respond to either of these requests. It is noted that USD #394 did respond appropriately to the mother's written request, which specifically referred to the special education and the IDEA, on August 24, 2021.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to respond with a PWN to the mother's verbal requests for an initial evaluation for special education for her child on January 18, 2021 and again on May 5, 2021.

> ISSUE TWO: The USD #394, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to evaluate the student in all areas of suspected disability during the special education evaluations conducted during the 2021-22 school year.

Positions of the Parties

The parents reported that USD #394 agreed to conduct an initial evaluation for special education following their written request on August 24, 2021. However, the school staff unilaterally determined what areas needed to be assessed in order to determine eligibility for special education services. The parents indicated they had concerns in regards to the student's impulsivity, sensory dysregulation, and pragmatic language

skills which were not addressed during the evaluation conducted during the first semester of the 2021-22 school year.

USD #394 stated that all fourteen areas of exceptionality were considered by the multidisciplinary team, including the parent, during the initial special education evaluation conducted on November 1, 2021.

USD #394 reported,

> All areas of exceptionality were considered during the special education evaluation conducted in November 2021. During the eligibility meeting, the team reviewed the Evaluation and Eligibility Team Report. As a part of that, all fourteen eligibility categories were presented. In each appropriate section of the report, it is documented that the team does not have any concerns at this time. Included in those sections were Health, as there were no known or documented health concerns, the team felt the student didn't qualify for eligibility under Other Health Impairment. Under the other sections including Hearing and Vision, Motor Skills, Cognitive Skills / Adaptive Behavior, and Communication Skills, the team also documented there were no concerns at this time. In the area of Academic Skills, the student scored in the average and above average range. Her combined measure has the student scoring in the above average range. It was explained at the time of the meeting that the student did not meet the criteria for Specific Learning Disability. The only area of concern was Social/Emotional Behavior. At the time of the eligibility meeting team had no reason to suspect Autism and the parent did not disagree. The only area the team felt the student might qualify for was Emotional Disturbance and this was reviewed and rejected. The student did not qualify for special education services and the parent agreed.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #394.

The findings of Issues One are incorporated herein by reference.

In response to the mother written request for an evaluation under the IDEA, Ms. Price responded via email on August 15, 2021 stating,

> I received your email regarding a Functional Behavioral Assessment and Positive Behavioral Plan for the student. I wanted to reach out to you to let you know we would be happy to complete that. I just need a couple things from you. The first being a signed consent form. While I do realize that you gave us consent in this email, I just have to have a Prior Written Notice of Evaluation form on file. Secondly I CC'd Courtney Edge, our SEL (Social Emotional Learning) Coordinator to this email as she has worked with the student and has knowledge and information that we could use for the FBA/BIP. I will get that consent form to you as quickly as possible.

Ms. Reilly also contacted the mother that same day to get updated information about the status of the private therapy recommended at the end of the 2020-21 school year. The mother responded that the student had participated in weekly counseling sessions for approximately two months during the summer but was not currently receiving any counseling due to scheduling conflicts between the school and therapist's schedules. The mother shared that the student was referred for "a formal evaluation but the soonest anyone can get her in is the end of January."

The PWN for Initial Evaluation and Request for Consent dated August 26, 2021 shows the proposed action as,

> The team is proposing to conduct an initial evaluation of your child. Included in the evaluation are assessment tools and strategies (e.g. record reviews, interviews, observations, tests, your child's response to scientific research-based interventions and information provided by you). Information will be collected in the areas checked on the following page that provide relevant information that directly assist the team in determining a) whether your child is a child with an exceptionality and the educational needs of your child; b) the present levels of academic achievement and related developmental needs of your child; and c) whether you child needs special education and related services.

The areas checked as needing new data on this PWN included Health/Motor Ability; Vision; Hearing, Social/Emotional Status / Behavioral Status; and Academic Performance. The areas of General Intelligence; Communicative Skills; Transition Skills; and Other were left blank.

The explanation of why the action is proposed states, "Despite general education interventions, the student continues to demonstrate a need for further behavioral supports. Parents have requested the team complete a functional behavioral assessment to create a behavioral plan."

The PWN lists data used as the basis for the proposed action as "team and parent input". However, the mother reported that she was not contacted to provide any information prior to receiving the PWN requesting consent for an initial special education evaluation. There is no documentation to show that the parent participated in the review of existing data or provided any input into the areas to be assessed during the evaluation other than the August 24, 2021 written request for a functional behavioral assessment in order to create a behavior plan. The mother indicated she had ongoing concerns at that time in regards to the escalation in frequency, duration, and intensity of the student's problem behaviors which she believed were caused by impulsivity, sensory dysregulation, and pragmatic language delays. Sensory dysregulation and pragmatic language skills were not addressed in the November 1, 2021 evaluation.

School staff noted the mother emailed the written request for an evaluation on August 24, 2021 and that the PWN for an Initial Evaluation and Consent was provided to the mother via email on August 26, 2021. The PWN was signed electronically and returned to the district that same day.

A Notification of Meeting was sent to the parents on October 25, 2021 to schedule a meeting for November 1, 2021at 2:45 p.m. via GoogleMeet. The purpose of the meeting is to review the evaluation, determine eligibility, and to develop an IEP, if appropriate.

The Evaluation and Eligibility Team Report documents no concerns were noted in the areas of vision, hearing, health, motor, cognitive skills/adaptive behavior, and communication. Additional assessments were conducted in the areas of academic achievement and social/emotional/behavioral skills through observations and standardized assessment.

The report documents the student was observed a total of 230 minutes in the classroom setting. During that time frame, she was on task and transitioning appropriately for 149 minutes (65% of the time). The student was off task (verbal, motor, and/or passive) about 74 minutes (32% of the time). She had a total of 11 outbursts that equaled about 17 minutes (8% of the time).

The report states that behavioral rating scales were completed by the student's kindergarten and first grade teachers as well as her parents but does not identify the specific behavior rating scale used to assess the student. All three raters marked the area of Depression as "clinically significant". The parents and the first grade teacher rated the following behaviors as "clinically significant": Hyperactivity, Aggression, Conduct Problems, Overall Internalizing and Externalizing Problems, Withdrawal, and Adaptability. The following behaviors were rated as "clinically significant" by the parents and "at-risk" by the first grade teacher: Anxiety, Learning Problems, Adaptive Skills, Social Skills, and Functional Communication.

The Kaufman Test of Educational Achievement – Second Edition, Brief Form (KTEA-2 Brief) was used to assess academic achievement. The student scored "Average" in reading and writing and "Above Average" in math and her overall academic achievement level.

The Summary and Recommendations section of the Evaluation Report states,

> The student does not appear to qualify for special education service, her behaviors are significant to warrant a general education plan to ensure the student's needs are being met.

The parent was provided with a PWN dated November 1, 2021 recommending a behavioral plan be implemented in the general education classroom, without additional support through special education services. The explanation for this action states that the student does not appear to be demonstrating a need for specially

designed instruction based on the data included in a review of records, observations, interviews, academic testing, team and parent input. The PWN indicates that implementing a behavioral plan through special education was considered, but this was rejected as the student did not meet eligibility for any exceptionalities. The PWN documents the mother consented to the proposed action on November 1, 2021.

The student received two days of OSS on November 9 and 10, 2021due to destruction of property, physical agression towards peers and adults, yelling, screaming, attempting to eat inedible objects, noncompliance, and eloping from the classroom and building on November 8 2021. On November 12, 2021, a referral to the Child Study Team was initiated and a general education behavior intervention plan was developed and shared with the parents.

A meeting was scheduled for January 21, 2022 at 2:30 p.m. with the parent and child study team members to review the impact of the intervention; however, this meeting was canceled because the parents emailed a written request on January 12, 2022 for another special education evaluation to specifically consider eligibility in the exceptionality categories of Emotional Disturbance (ED) and Autism.

On January 17, 2022, the mother shared that a nueropsychological evaluation of the student was being conducted by Dr. Sarah Coleman, Psychologist at Hope Point.

A PWN for Reevaluation and Request for Consent was provided to the mother on January 20, 2022. The PWN states, "The LEA has been requested, or proposes, to complete the following action to consider your child's needs for special education services. Please review the items marked. If you have questions, please feel free to discuss them with the LEA educational staff." However, no action was marked in the section of the PWN titled "Special Education Action Proposed." The explanation of why the action is proposed indicates that the student's parents have requested the team to complete and evaluation to determin her eligibility for special educaiton services. The data used as a basis for the proposed evaluation includes a review of records, observations, and parent input.

The PWN documented that existing data is available in the areas of Health/Motor Ability, Vision, Hearing, Social Emotional Status/Behavioral Status, General Intelligence, and Academic Performance. New data was marked as being needed in the areas of

Social Emotional Status/Behavioral Status, General Intelligence, and Academic Performance.

Other factors relevant to the proposed action were described as "While new data for general intelligence, academics, and social emotional/behavioral status has been marked, a formal evaluation in this area may not be required to make determinations of the student's eligibility."

The PWN was signed electronically by the parent on January 24, 2022.

On February 8, 2022, a meeting was held with the principal, school psychologist, classroom teacher, and SEL Coorindator. As a result of that meeting the mother requested additional data be collected in the area of Adaptive Behavior and instructional control. On February 14, 2022, the district autism specialist requested the parents comple the Childhood Autism Rating Scale – Second Edition Questionairre for Parents and Caregivers (CARS-2 QPS).

On February 25, 2022, the student had a meltdown at school that was so severe that the student was evaluated at ComCare for a mental health crisis. The mother reported,

> They had 3 staff with her for intake and consulted with each other before talking more with us. They felt there was no mental health crisis and no intervention they could provide. She asked if she was autistic and we explained she was being evaluated by Dr. Coleman. She stated she suspected it was "an autistic meltdown" which can present as aggressive. If another nuerodivergence related issue occurs, it can look similar and be a result of being dysregulated from things like overstimulation, trouble with transitioning, or introspection, and not having support needed to regulate or continuing to be overstimulated while being supported. She is not able to make any diagnosis since she does not believe it's a mental health issue currently. Her recommendation was to follow Dr. Coleman's treatment plan after the evaluation is complete.

On March 8, 2022, Ms. Price requested the parents complete the Adaptive Behavior Rating Scale for Chidren (BASC). On March 21, 2022, Ms. Price requested to add an

occupational therapy (OT) evaluation to include the area sensory to the PWN originally dated January 20, 2022. The parent gave electronic consent on that same date.

The parent provided a copy of the Nueropsychological Evaluation Report completed by Dr. Coleman to USD #394 on March 28, 2022. The diagnosic conclusions in this report include a diagnosis of Autism Spectrum Disorder, Level 1 without intellectual disability and General Anxiety Disorder. Per verbal report from both parties, an eligibiity determination meeting is scheduled for April 1, 2022 to review the results of the evaluation being conducted by USD #394..

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.304(c)(4) require school districts to assess any child suspected of being a child with a disability in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.

As part of an initial evaluation, federal regulation implementing the IDEA at 34 C.F.R. 300.305 (a)(1) require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers.

On the basis of that review and input from the child's parents, federal regulations implementing the IDEA at 34 C.F.R. 300.305(a)(2) require school districts to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

In this case, the evidence supports a finding that USD #394 in violation of 34 C.F.R. 300.305(a)(1) and 300.305(a)(2), did not include the parents in the review of existing evaluation data, nor did it obtain input from the parents during the review of existing data resulting from the parent's written request for a special education evaluation on either August 24, 2021 or January 12, 2022 in order to determine what additional data, if any, was needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

Interviews and documentation found the parents, at a minimum, had concerns in the area of pragmatic language skills for the August 24, 2021 request; however, the Evaluation Report documents that "the team does not have any communication concerns at this time."

Interviews and documentation found the assessment plan described in the PWN resulting from the January 12, 2022 request was amended on March 21, 2022 to add an additional areas of assessment addressing sensory concerns which may be contributing to the mother's concern about dysregulation impacting the student's behavior. It is noted that the current evaluation still does not include the need for additional data in the area of Communication, specifically pragmatic language skills, which are also still a parent concern.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to obtain input from the parents during the review of existing data in order to determine what additional data, if any, was needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

Federal Regulations at 34 C.F.R. 300.305(a)(2)(i)(B) states that a reevaluation is conducted to determine if the student with a disability continues to have such a disability and the educational needs of the child. In this case, USD #394 provided the parents with a PWN for a Reevaluation and Request for Consent on January 12, 2022 even though the student was not a student with a disability. This was a procedural error, but it did not result in any deprivation of educational benefit to the student or to the parent's right to participate in the evaluation process.

ISSUE THREE: The USD #394, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures for a student suspected of having a disability during the 2021-22 school year.

Positions of the Parties

The parents reported that the student has been out-of-school suspended (OSS) and in-school suspended (ISS) for more than 10 days during the 2021-22 school year. They believe USD # 394 should have conducted a manifestation determination review (MDR) meeting to determine if the suspensions were the result of the student's suspected exceptionality and services provided.

USD #394 reported it has followed the appropriate disciplinary procedures for a student suspected of having a exceptionality. According to their records, the student has only been placed on OSS for a total of eight days during the 2021-22 school year. School staff indicated that the student was sent home for medical concerns on one occasion and the parent is considering this as an OSS day. In addition, the student's general education behavior intervention plan allows for the student to move to a quiet location to take tests or to refocus when something was upsetting her in the classroom. USD #394 believes the parents are confusing this intervention with ISS.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #394.

The findings of Issues One and Two are incorporated herein by reference.

The 2021-22 Discipline Log from the Student Information System and copies of Notices to Student of Short-Term Suspension after an Informal Hearing showed the student was removed from the general education classroom for disciplinary reasons on the following dates:

Date	Type of Removal	Disciplinary Infraction
September 20, 2021	ISS	Inappropriate behavior
November 9, 2021	OSS	Unsafe and disruptive behavior; eloping
November 10, 2021	OSS	Unsafe and disruptive behavior; eloping
January 12, 2022	OSS	Unsafe and disruptive behavior
January 13, 2022	OSS	Unsafe and disruptive behavior
February 14, 2022	OSS	Unsafe and disruptive behavior
February 15, 2022	OSS	Unsafe and disruptive behavior
February 16, 2022	OSS	Unsafe and disruptive behavior
February 18, 2022	OSS	Unsafe and disruptive behavior
March 28, 2022	ISS	Unsafe and disruptive behavior

An emergency safety intervention (ESI) physical restraint was used for approximately two minutes with the student on February 14, 2022.

On February 15, 2022, Ms. Reilly noted in an email to the child study team,

> Given the number of days that she has had an OSS now, we only have 1 more to utilize before a manifestation mtg [meeting] is required. I've never had to conduct a manifestation mtg [meeting] because I've never had a

> student with this many OSS days . . . so I'd need to have Hannah [Ms. Price] and Courtney [Ms. Edge] assist with such a process, I just wanted you to know that this is where we are."

On February 23, 2022, the mother emailed school staff to notify them that the student has a broken left wrist and will be wearing a cast. On February 25, 2022, the student was unsafe with her cast in regards to others and well as herself. The parents were contacted and they took the student at 2:45 p.m. for an emergency evaluation for a mental health crisis at ComCare. The parent notified the district via email that evening that ComCare indicated the student was not suffering from a mental health crisis but instead was having an "autism meltdown" which can present as aggression.

Applicable Regulations and Conclusions

Federal regulations, at 34 C.F.R. 300.534, states that students who have not been identified as a child with a disability 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.

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 school-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.

In this case, there are two periods during the 2021-22 school year that USD #394 were on notice that the student may be a child with an exceptionality as a result of the parents' request for an evaluation. The first period ran between August 24, 2021 (when the parent made the first request for an evaluation) and November 1, 2021 (when an eligibility team determined that the student was not eligible for special education services). That period included only one day of ISS.

The second period runs between January 12, 2022 (when the parent made another request for an evaluation) and April 1, 2022 (the date on which the second eligibility meeting is scheduled), again, as a result of the parents' request for an evaluation. There were six days of OSS and one day of ISS during this timeframe.

The evidence presented supports the finding that the student was not suspended for more than 10 school-days during any of the time periods in which the district was deemed to have knowledge that the student was a child with a disability. Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to follow appropriate disciplinary procedures for a student suspected of having a disability during the 2021-22 school year.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300.111 require school districts to identify, locate and evaluate all children with disabilities who are in need of special education and related services, regardless of the severity of their disability, including children who are suspected of being a child with a disability even though they are advancing from grade to grade.

   In this case, interviews and documentation showed there was sufficient reason for USD #394 to suspect the student may be a child with a disability

at the May 5, 2021 meeting with the parent in light of the increase in the frequency, duration, and intensity of the problem behaviors in kindergarten over the course of the second semester combined with the fact that the student previously received counseling as a general education intervention at the age of four in the preschool setting even though the kindergarten grade card showed the student was making academic progress.

B. 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. In addition, federal regulations, at 34 C.F.R. 300.503(a), state that 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, unless there are unusual circumstances.

   In this case, interviews and documentation found that USD #394 failed to respond appropriately with a PWN to the mother's verbal request for an initial evaluation for special education for her child on January 18, 2021 and again on May 5, 2021. On both of these dates, while the mother did not specifically state that she wanted an evaluation for special education, she did express wanting an evaluation to determine interventions and supports to address the increase in frequency, duration, and intensity of the problem behaviors occurring in the school setting. There were no unusual circumstances that would justify not providing a PWN in response to either of these requests for an initial evaluation.

C. Federal regulations at 34 C.F.R. 300.305(a) require school districts to obtain participation in and to obtain input from the parents during the review of existing data in order to determine what additional data, if any, is needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether

any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

In this case, the evidence supports the finding that USD #394 did not obtain participation in or input from the parents during the review of existing data in order to determine what additional data, if any, was needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum. Interviews and documentation found the parents, at a minimum, had concerns in the area of pragmatic language skills; however, the Evaluation Report documents that "the team does not have any communication concerns at this time."

Based on the foregoing, USD #394 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #394 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

    a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) Federal regulations at 34 C.F.R. 300.111 which require school districts to identify, locate and evaluate all children with disabilities who are in need of special education and related services, regardless of the severity of their disability, including children who are suspected of being a child with a disability even though they are advancing from grade to grade

    b. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) Federal regulations at 34 C.F.R. 300.301

and 300.503(a), which provide for parents to request an initial evaluation for their child if they suspect a disability, and that within a reasonable amount of time of the public agency receiving such a request, the district shall either accept the request and, after providing a PWN and obtaining parent consent, 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.

c. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.305(a) which require school districts to obtain participation in and obtain input from the parents during the review of existing data in order to determine what additional data, if any, is needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

2. If the student is determined to be eligible for special education and related services at the April 1, 2022 eligibility determination meeting, USD #394 will, within a reasonable time develop an IEP for this student, and at the meeting where the IEP is developed, the district shall involve the parent in a discussion regarding if compensatory services are required in order to provide the student with a free appropriate public education beginning on November 1, 2021. Within 5 school-days of that meeting, the district shall submit to Special Education and Title Services (SETS) either a signed statement from the parent stating that compensatory services are not needed, or a written plan for approval by SETS for providing compensatory services. In addition, USD #394 will provide the parent and SETS with a copy of the resulting IEP and prior written notice provided to the parent within 10 business days following the IEP team meeting. If the student is not determined to be eligible for special education and related services at the April 1, 2022 eligibility determination

meeting, USD #394 will provide the parent and SETS with a copy of the resulting prior written notice provided to the parent within 10 business days following the eligibility determination meeting.

3. No later than May 31, 2022, the Butler County Special Education Interlocal #638 (BCSBC) shall review and revise, if appropriate, its procedures and practices related to conducting the Review of Existing Data as part of the initial evaluation process. No later than June 15, 2022, BCSBC will provide a copy of the written procedures to SETS for review and approval as well as a plan for distribution of the written procedures. Within 10 school-days of approval,, the written procedures will be distributed to all licensed and certificated special education staff, including school psychologists, and building administrators, and written documentation of that distribution shall be provided to SETS.

4. No later than May 1, 2022, USD #394 will arrange for TASN to conduct a training for all licensed and certificated special education staff, including school psychologists, and building administrators working in USD #394 regarding the IDEA requirements related to conducting a Review of Existing Data as part of the initial evaluation process as well as when and how to provide appropriate PWN for an initial evaluation and reevaluation. No later than August 30, 2022, USD #394 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #394 will provide SETS with any handouts and/or a copy of the presentation.

5. Further, USD # 394 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be

emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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. 394,
Rose Hill Public Schools: 22FC394-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on March 1, 2022, by _____ and _____ _____, on behalf of their daughter, _____. In the remainder of this decision, Mr. and Mrs. ____ will be referred to as "the parents," and _____ will be referred to as "the student." An investigation of the complaint was undertaken by a complaint investigator on behalf of the Special Education and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the allegations, was issued on March 31, 2022. That Complaint Report concluded that there were violations of special education statutes and regulations with regard to Issue 1 and Issue 2. The investigator did not substantiate a violation with regard to Issue 3.

Thereafter, on April 9, 2022, the school district filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint filed by the parents, the Complaint Report, and the district's notice of appeal (including 13 exhibits). The Appeal Committee also reviewed a written statement provided by the investigator, responding to the district's appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

PRELIMINARY MATTERS

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report. That regulation states, in part, that: "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support. When a party submits an appeal and attaches exhibits without

stating the relevance of the exhibits, the Committee does not attempt to find how those exhibits might relate to the appeal.

No new issues will be decided by the Committee. The appeal process is a review of the Complaint Report. The 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.

In addition, K.A.R. 91-40-51(f) specifies that an appeal of a special education complaint report may appeal the "findings or conclusions" of a complaint report. There is no provision which permits an appeal of corrective actions. Therefore, the Committee cannot, and does not, address any part of an appeal that relates to corrective actions.

DISCUSSION OF ISSUES ON APPEAL

> Issue 1: The USD #394, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate child find procedures when it failed to suspect the student was a student with a disability during the past 12 months.

The investigator found a violation of the child find obligation because the district did not respond with a PWN after two instances of a parent request for an initial evaluation (Report p. 15). As indicated in the district's appeal, this appears to be somewhat problematic because, as the report says, "while the mother did not specifically state that she wanted an evaluation for special education, she did express wanting an evaluation to determine interventions and supports to address the increase in frequency, duration, and intensity of the problem behaviors occurring in the school setting (Report, p. 15)." The problem becomes larger because both of these alleged requests were verbal. Moreover, the primary documentation for the verbal exchanges were in a handwritten communication log made and kept by the parents. The parents did not make a written request for an evaluation until August 24, 2021 and the district then immediately responded with a PWN, proposing an evaluation on August 26. All of this is documented in the Report, on page 15.

This is one of those cases where the evidence is not decisive on its own and an investigator has to make credibility judgments when assessing the weight to give to whatever evidence there is. In her response to this appeal, the investigator said:

"I gave great weight to the parent's handwritten log because it was a contemporaneous account of her communication with the school staff. The school staff had recollections but no documentation that was created at the time of the interactions."

The Committee notes that there is no burden of proof requirement in special education complaints. In Letter to Reilly, 64 IDELR 219, (OSEP 2014), the Office of Special Education Programs (OSEP) expressed the view that it is inconsistent with IDEA regulations to assign a burden of proof to either party in a state complaint. OSEP added (emphasis added):

> The State complaint process is intended to be less adversarial than the more formal filing of a due process complaint and possible due process hearing. The State complaint procedures in 34 CFR §§ 300.151-300.153 do not provide the parties with the extensive procedural rights provided to parties in a due process hearing. For example, the State complaint process does not require parties to provide evidence, nor do they require that a State allow parties to review the submissions of the other party or to cross-examine witnesses. 71 Fed. Reg. 46540, 46605 (Aug. 14, 2006).

Moreover, OSEP acknowledged that a state may use a "preponderance of the evidence" standard in making determinations in a formal complaint as to whether a public agency violated a requirement of Part B. A preponderance of the evidence means only that the evidence located by an investigator indicates that a particular conclusion is "more likely than not." Another way to describe the "preponderance of evidence" standard is that it can be a mere tipping of the scale in one direction or the other. That tipping may be minimal, perhaps only resulting in a 51% to 49% probability, but that is enough to meet the standard. In her response to this appeal, the investigator in this complaint stated that she could find no documentation from the district that was created at the time of the interactions between the parties, and that, in her judgment, the parents' contemporaneous account of her communication with the school staff significantly tipped the scale.

In addition, in her response to this appeal, the investigator added that there was other evidence supporting the parent's statements in her handwritten communication log. The investigator summarized these in her response to this appeal as: "Looking at the documentation provided by both the district and parent, there were significant ongoing behavioral concerns in the classroom which intensified as the school year progressed combined with the parent indicating she wanted some type of help for her student plus previous interventions for behavioral problems beginning in preschool in another LEA. The district had multiple 'red flags' indicating that this student may have a disability and be in need of special education and related services." That documentation also helped to tip the scale for the investigator.

The investigator concluded that the district was in violation of law because it did not respond, with a PWN, to the parent's verbal requests for an evaluation on January 18, 2021 and again on May 5, 2021 (Report, p. 15). The committee concludes that sufficient evidence exists to support the findings and conclusions that the parent made verbal requests for evaluation and the school did not respond with a PWN. Accordingly, the Complaint Report is sustained on Issue 1.

[1] In its appeal of Issue1, the district notes that it is required to implement a multi-tiered system of supports (referred to as MTSS) rather than immediately evaluate every child who needs help for special education. The Committee agrees with this statement. State regulations require that general education interventions be attempted before referring a child for an evaluation unless both the parents and the district believe an evaluation is appropriate. There clearly was no such agreement. However, the investigator did not say the district should have immediately evaluated this student upon parent request. What the investigator said in her report was that the district should have responded to the parent's vocal requests for an evaluation with a Prior Written Notice (PWN). In its appeal, the district says: "*"The findings by the investigator on this issue are not based on facts.[1] Rather, they were based on the investigator's opinion after the fact, that the school should have conducted an evaluation earlier than they did.* This is misplaced because the investigator made no such finding. The violation that was substantiated in this complaint was not for a failure to evaluate. The school could have responded to the parent's oral request for an evaluation with a PWN denying the request and providing an explanation as to why the request was being denied (still conducting general education interventions). Had it done so, it is likely that there would not have been a conclusion that there was any violation connected with this

issue. It is the fact that the school did not respond to the parent's verbal requests with a PWN that resulted in a violation.

[2] In a footnote to its appeal, the district states that the communication log was not provided to it and, as a result, the district was denied due process because it was "not given the opportunity to know and confront the allegations against them." The Committee disagrees. Although a copy of the communication log was not provided, the district was notified of the allegation presented for Issue 1. In a March 7, 2022 e-mail addressed to Miles Harvey and Lisa Arndt, the investigator identified all three issues that would be investigated. For Issue 1, the investigator stated that the issue to be investigated was that the district "failed to follow appropriate child find procedures when it failed to suspect the student was a student with a disability during the past 12 months." This was ample notice of the allegation to be investigated. In addition, a special education complaint investigation, such as this one, is not an open hearing where each side sees and hears each piece of evidence presented and has an opportunity to rebut. Rather, the investigative process is one of accumulating relevant information in order to make findings and conclusions regarding the issues presented. In this process, the investigator is under no obligation to disclose the accumulated evidence to either party (See Letter to Reilly cited above).

> Issue 2: The USD #394, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to evaluate the student in all areas of suspected disability during the special education evaluations conducted during the 2021-2022 school year.

In its appeal, the district says "If the parent had additional concerns, why didn't the parent insist that her concern be documented in the eligibility report and refuse consent?" The Committee will not address that question because the pertinent regulation does not require the parent to take either of those steps. The pertinent regulation is 34 C.F.R. 300.305(a), which the investigator correctly described on page 22 of her report, as follows (emphasis added):

> As part of an initial evaluation, federal regulation implementing the IDEA at 34 C.F.R. 300.305 (a)(1) require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct

> a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers.
>
> On the basis of that review and input from the child's parents, federal regulations implementing the IDEA at 34 C.F.R. 300.305(a)(2) require school districts to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; and whether any special education and related services are needed to enable the child to meet the measurable annual IEP and to participate, as appropriate, in the general education curriculum.

Thus, under these regulations, the school district has an affirmative duty to: (a) involve the parent in, and to get input from the parents, in the process of reviewing existing data, and then, on the basis of that review to: (b) obtain input from the child's parents to identify what additional data, if any, are needed to complete the evaluation.

With regard to the August 26, 2021 PWN proposing an initial evaluation, the report says:

> The PWN lists data used as the basis for the proposed action as "team and parent input". However, the mother reported that she was not contacted to provide any information prior to receiving the PWN requesting consent for an initial special education evaluation. There is no documentation to show that the parent participated in the review of existing data or provided any input into the areas to be assessed during the evaluation other than the August 24, 2021 written request for a functional behavioral assessment in order to create a behavior plan. The mother indicated she had ongoing concerns at that time in regards to the escalation in frequency, duration, and intensity of the student's problem

behaviors which she believed were caused by impulsivity, sensory dysregulation, and pragmatic language delays. Sensory dysregulation and pragmatic language skills were not addressed in the November 1, 2021 evaluation." (Page 18 of Complaint Report – emphasis added).

In its appeal, the district argues that the parent agreed with the results of the evaluation, signed the PWN, and gave consent for the evaluation. That is a factual statement, but those statements do not address the conclusion of the investigator that the parent was not involved in the review of existing data. The Committee does not find anything in the district's appeal in Issue 2 that provides any evidence of the district having obtained any parent input or other participation in the review of existing data.

With regard to a Notice of Appeal of a complaint decision, by either party, Kansas regulations, at K.A.R. 91-40-51(f)(1), state that "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, as previously stated in the "Preliminary Matters" section of this decision, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support. In this appeal, the district does not provide a detailed statement of the basis for alleging that the report is incorrect on Issue 2. Therefore, the Committee finds no basis on which to overturn the report. The findings and conclusions in the Report regarding Issue 2 are sustained.

CONCLUSION

The Appeal Committee concludes that there is sufficient evidence to support the findings and conclusions of the investigator regarding Issues 1 and 2. Those findings and conclusions are sustained.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 20th day of April, 2022.

APPEAL COMMITTEE:

Brian Dempsey

Stacie Martin

Mark Ward

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #203
ON MARCH 4, 2022

DATE OF REPORT: APRIL 5, 2022

This report is in response to a complaint filed with our office by _____and _____ _____, on behalf of their daughter, _____. For the remainder of this report, _____ will be referred to as "the student." Mr. and Mrs. _____ will be referred to as "the parents." Mr. _____ will be referred to as "the student's father." Mrs. _____ will be referred to as "the student's mother."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on March 28, 29, and 31, 2022. On March 15 and 24, 2022, the investigator spoke via telephone with Dr. JaKyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative.

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

- Eight Exhibits provided along with the formal complaint form including
    - Annual IEP for the student dated November 3, 2021 (Exhibit A)
    - Correspondence dated December 14, 2021 from the counsel for the parents to the counsel for the district (Exhibit B)
    - Email dated February 4, 2022 from the transition specialist to the parents (Exhibit C)
    - Email exchanges dated February 9 and 14, 2022 between the student's parents and the transition specialist (Exhibit D)
    - Correspondence dated February 8, 2022 from the counsel for the parents to the counsel for the district (Exhibit E)
    - Email exchanges on February 28 and March 1, 2022 from the counsel for the parents to the counsel for the district (Exhibit F)
    - Amended IEP for the student dated January 26, 2022 (Exhibit G)

    - Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 3, 2021 (Exhibit H)
- IEP for the student dated November 9, 2020
- Meeting Summary dated September 20, 2021
- Settlement Agreement signed by the parties on October 21 and October 25, 2021
- Email exchange dated October 25, 2021 between the transition specialist and the student's mother
- Email exchange dated November 16, 2021 between the volunteer manager for the volunteer agency and the transition specialist
- Email dated November 29, 2021 from the parent to district staff
- Email exchange dated January 7 to 12, 2022 between the transition specialist and the student's mother
- Meeting Summary dated January 26, 2022
- IEP Amendment Between Annual IEP Meetings dated January 26, 2022
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 26, 2022
- March 8, 2022 email from a special education coordinator
- Worksite Evaluation Report dated February 14, 2022
- Email dated March 11, 2022 from the transition specialist to district staff
- Email dated March 22, 2022 from the transition specialist to the parents
- Online Academic Calendar for the district for the 2021-22 school year

Background Information

This investigation involves a 21-year-old girl who is enrolled in the district's program for students ages 18 to 21. The student is nonverbal. She has multiple diagnoses including epilepsy, cerebral palsy, Autism, hydrocephalus with a working shunt, failure to thrive, MTHFR (Methylenetetrahydrofolate reductase) dystonia, PTSD, and gastric reflux. She has an oral fixation and frequently places items in her mouth.

The student meets eligibility criteria to receive special education services under the category of Multiple Disabilities as well as Speech Language Disabilities. She requires full adult assistance to navigate through and participate in most activities throughout the school day. She is supported by a 1:1 nurse as well as a 1:1 paraeducator. The

student receives Occupational and Physical Therapy, Adapted PE, Vision services, Speech/Language therapy, Music Therapy and transition services in addition to special education classroom services..

Issues

In their complaint, the parents identify three concerns.

Issue One: The district has failed to implement transition services at Heart to Heart International (HHI) as specified in the student's IEP and sought to change these services without IEP Team or parental input and in disregard for the student's safety.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

When developing a student's IEP, the IEP team makes decisions regarding the student's placement. Prior Written Notice must be provided when the school refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)).

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 building (K.A.R. 91-40-1(t)).

Parent's Position

The parents assert that the failure on the part of the district to provide the student with agreed-upon vocational opportunities through HHI has deprived the student of a FAPE (free appropriate public education).

District's Position

The district asserts that while the student has not worked on-site at HHI, the student has had the opportunity at the school to work on tasks similar to those in which she would have been engaged at HHI and therefore has not been denied a FAPE.

Investigative Findings

After completing high school, the student will, according to the "Desired Post School Outcomes" section of her November 9, 2020 IEP, "volunteer or work in the community utilizing appropriate supports." On August 26, 2021, the special education transition specialist for the cooperative made a visit to Heart to Heart International (HHI) to "evaluate the potential of a volunteer placement for [the student]." As stated in the "Worksite Evaluation Report" included in the student's November 3, 2021 IEP, Heart to Heart International (HHI) is a "nonprofit organization with a mission of improving health care access in the U.S. and around the world. It strives to achieve this mission by distributing resources, conducting training, engaging volunteers, and responding to disasters."

According to the evaluation, HHI volunteers' work hours "depend upon the need for disaster or humanitarian aid at any given time. Three days per week would probably be the norm."

The student first attended school for the 2021-22 school year on September 20, 2021. At a meeting on September 20, 2021, the team talked about the "new job opportunity" for the student [at HHI] where she would be "working on 'take out' and 'put in' tasks." The meeting summary states that the "parents would like [the student] to get acclimated in her school routine before introducing the job."

On October 21, 2021, the parents signed a "Settlement Agreement" with the district in connection with a lawsuit filed against the district by the parents which addressed issues associated with the student's late start for the 2021-22 school year. The agreement was signed by the director of the cooperative on October 25, 2021. The parties agreed that "a vocational opportunity (volunteer position)" for the student would be provided through HHI. The parties also agreed that the district would maintain a "separate log specifying the date, start time, end time, place, staff/outside party providing…additional instruction/service, and description of the additional services or instruction provided…identified by the term 'Additional Services'…[and shall provide the parents] a copy of the log on a weekly basis." This log was to be used to document the district's provision of compensatory special education and related services including 240 minutes of compensatory CBI services.

On October 25, 2021, the transition specialist sent an email to the student's mother to "confirm if Wednesday, Nov. 10th works for a start date at H-to-H. As mentioned, they want two weeks' notice, so I'll need to email them right away." The student's mother responded, "How about we wait until the IEP to make that determination on a start date."

The annual IEP team meeting for the student was held on November 3, 2021.

In the "Development of Employment and Other Post-Secondary Adult Living" portion of the "Needed Transition Services" section of the student's November 3, 2021 IEP the team included the following statement:

> "[The student] will begin working at Heart to Heart International. She will be continuously evaluated progress (sic) in her work skills will be documented."

The student was scheduled to begin volunteering at HHI during the week of November 15, 2021, but the student was absent from November 16 through November 19, 2021 and again on November 22 and 23, 2021. On November 16, 2021, the transition specialist contacted the volunteer manager for HHI to let her know the student would be absent. The volunteer manager responded, noting "since the week after next is the start of December and we will be winding down volunteering for the year, we should reconvene in January to talk about the 2022 availability...While it does not look like 2021 worked to get things started, I think we learned a few things that will help us plan next year's schedule."

On November 29, 2021, the student's mother sent an email to the district informing staff that she had just spoken to the "coordinator at Heart to Heart and it seems they honestly don't know when [the student] would start next year. It all depends on funding and product. Her words were 'it would be a few months into the new year, possibly May." The parent wrote:

> There were concerns at the IEP meeting and in several emails, that the school district doesn't have a vocational backup plan for [the student]. Our question is how are you going to meet [the student's] vocational needs?
>
> [The student's] start date for Heart to Heart International was to be the 17th of November but she was out sick. Nobody informed us that that would be her

only day there. It was stated to [the parents] that Heart to Heart would close down sometime in December but that's not true, they are closed now.

On December 14, 2021, the attorney for the parents sent a letter to the attorney for the district noting that "the Heart to Heart volunteer coordinator recently advised that there might not be [an opportunity for the student to receive vocational training at HHI] until May 2022." The attorney said that the parents did not agree with the district's position that the student would receive CBI services "through her experiences with the class" and stated that "the District [was] not taking steps to identify any other vocational opportunities for [the student] that meet her needs."

In the December 14, 2021 letter, the attorney wrote that the parents requested the district "1) identify and propose additional vocational opportunities for the student; 2) revise the student's IEP to reflect greater specificity regarding the vocational/ transitional services and programming the district would provide; and 3) revise the student's post-secondary goals to help guide transition related vocational/transitional programming." The letter also stated that the parents requested an IEP Team meeting to discuss matters raised in the letter.

Winter Break for the district began on December 20 and extended through December 31, 2021. Monday, January 3, 2022 was a teacher work day, and students did not attend school on that date. Students in the district returned to school on January 4, 2022, but the student was absent from January 4-7, 2022.

On January 7, 2022, the transition specialist sent an email to the student's mother stating that HHI had "developed a regular volunteer schedule for Monday mornings and would like [the student] to join that team! She is invited to start on either February 7th or the 14th – whichever works best for us. Will Mondays work?"

According to the student's mother, she continued to be frustrated over the district's failure to develop alternative volunteer opportunities for the student in view of HHI's scheduling limitations. After seeing a news story regarding another local volunteer agency, the student's mother sent an email to the transition specialist on January 11, 2022 stating, "This might be worth looking into for [the student's] vocational training." The parent provided a link to ScrapsKC.

An IEP team meeting was held on January 26, 2022. The student's November 2021 IEP was amended to include the following statement:

> The specificity of the vocational experience at Heart to Heart International was updated to include "once a week trips with a one hour duration at the worksite to begin, with the possibility of increasing the duration up to 3 hours maximum once [the student] is comfortable with the environment. [The student's] 1:1 paraprofessional and 1:1 nurse will be prepared with her lunch, water, medical supplies, toileting supplies, etc. when on trips to the worksite."
>
> Postsecondary goal for independent living skills is changed to read: "Following High School Graduation, I will live at home with my parents and participate in my daily care routines and household activities to the maximum extent possible.

The above statements were also included in a prior written document emailed to the parents on January 26, 2022.

According to the written summary of the January 26, 2022 IEP meeting, the student was scheduled to start at HHI on February 7, 2022. She would begin "on a trial basis, an hour at a time." The team also discussed "in-district opportunities – job at CTE building, in an effort to get [the student] out of [her school building] and complete a work task. Job at district elementary school and work in the lunch room. [The parents] did not seem agreeable to these options; they indicated that being a school environment would not be suitable for vocational skills."

In a telephone conversation with the investigator on March 28, 2022, the student's mother stated that she did not believe that working in a school lunch room would provide the student with the opportunity to build the "put in/take out" skills she would be using in her volunteer settings – skills specifically addressed through a goal in the student's November 3, 2021 IEP.

The January 26, 2022 meeting summary documented that the transition specialist would be speaking with ScrapsKC to evaluate the possibility of a volunteer opportunity for the student with that organization, noting that the student's mother had brought the organization to his attention.

The transition specialist had made an initial visit to ScrapsKC during the week of January 24, 2022 and returned on February 8, 2022 to complete his worksite evaluation. He believed the organization could be an appropriate setting for the student. The district asserts they were prepared to offer the program as a community site beginning in February, but the parents declined the option, stating they were concerned about her handling "gross" items there.

In the March 28, 2022 conversation with the investigator, the student's mother stated that because the student is so "oral," the parents were concerned that the materials she would be handling might be dangerous to the student. The student's mother also stated that after talking with ScrapsKC staff, she was concerned that the student could be put at risk because volunteers did not undergo background checks. According to the parent, she had been told that a volunteer had come to the facility drunk and had to be removed.

During the time that HHI was closed in December 2021 and January 2022, the Omicron variant of Covid-19 had become widespread. As a result, HHI established a requirement mandating proof of vaccination for anyone working in the facility. On January 31, 2022, the transition specialist became aware that HHI would not allow unvaccinated individuals on-site. Vaccination was not a requirement for employment in the district. While the student had been vaccinated, neither her 1:1 paraeducator nor her 1:1 nurse had received a Covid vaccination.

On February 4, 2022, the transition specialist sent an email to the parents to inform them that the district would "not be able to comply with the HHI safety protocol for COVID vaccinations…[because HHI] is unable to provide accommodations for unvaccinated staff." The transition specialist wrote that the student "has an opportunity to volunteer at ScrapsKC" and could begin "immediately."

On February 9, 2022, the student's father sent an email to the transition specialist asking "why can't a vaccinated staff member who is trained, attend the vocational job with [the student] to Heart to Heart International?" The transition specialist responded on February 9, 2022 stating "staff supporting [the student] who are not vaccinated is the only barrier to her volunteering there. Let me pass on to the team the possibility of training and switching around staff."

On February 14, 2022, the student's mother sent an email to the transition specialist again asking why a trained staff member who was vaccinated could not be sent with the student to HHI. The student's mother stated that she and the student's father did not consent to a placement at ScrapsKC due to "environmental conditions and content she would be exposed to and handling due to her being oral."

The transition specialist replied to the student's mother on February 14, 2022 writing "…you realize [the student's] para and nurse are unvaccinated? Are you fine with only a trained para accompanying her, or are you requesting a nurse for the HHI trip as well?" The student's mother wrote back stating "[the student's father] and I want [the district]

to continue providing all services specified in [the student's] IEP/BIP (behavior intervention plan) including nursing and para services for the Heart to Heart International vocational trips."

The transition specialist sent another email to the student's mother on February 14, 2022, which included his Worksite Evaluation Report regarding ScrapsKC. In the email, the transition specialist wrote the following:

> ...I want to address your worries about the cleanliness of items [the student] might handle in their facility. I appreciate your concerns, as I was taken back by the scale of the operation, the crowds, and the massive inventory on my first visit to their converted warehouse. However, after hearing about their processes, I do not have any fears in this area. First...the volunteer coordinator closely supervises the volunteers and their projects during the 10:00 to noon time period (the facility does not open to the public until noon). [The volunteer coordinator] personally assigns projects, and I am sure she would be responsive to our request to closely monitor [the student's] materials for cleanliness. Part of their normal process is the disinfecting of tables and work areas after each use by a volunteer. Also, the organization has guidelines for materials which are accepted and allowed into the building..."

On February 8, 2022, the attorney for the parents emailed a letter to the attorney for the district. In his letter, the attorney stated that the parents were requesting that if district employees responsible for assisting the student (such as her para and nurse) were not vaccinated, then a vaccinated employee should be trained in order to be able to accompany the student.

The attorney also asserted that the district had not sufficiently evaluated the ScrapsKC facility to determine whether the student's medical, vocational, or transitional needs could be met there. According to the attorney, the executive director for the organization had reported that she could not guarantee a separate room for the student's tube feedings or in case she exhibited self-injurious behaviors. The attorney also asserted that the student would be handling "gross" items – a problem due to the student's oral fixation.

On February 28, 2022, the attorney for the district sent an email to the attorney for the parents stating that the district proposed sending the special education teacher and the school nurse (who had been trained by the 1:1 nurse) with the student to HHI for

one hour per day. The district proposed a second option of having the student go to a middle or elementary school to assist during lunch.

The attorney for the parents replied to the attorney for the district via email on February 28, 2022 asking in part:

1) IEP Team discussions and [student's] IEP anticipate increased frequency of trips and of longer duration, as [the student's] comfortability increases. Does this proposal anticipate that, or is it solely 1 day per week for 1 hour?
2) Commute is about 25 minute. Is it one hour at heart to heart (sic) plus commute time, or one hour total?
3) What is the district's proposal to make up for missed time at Heart to Heart?

The parents did not receive a response from the district and filed this complaint on March 4, 2022.

On March 8, 2022, a special education coordinator for the district sent an email to district staff stating that the district was "planning to move forward with providing alternate staff members to accompany the student to HHI beginning on March 28, 2022 noting that a special education teacher and school nurse would accompany the student on the trip to and from the site and for "one hour of work time there (in addition to travel time)."

On March 11, 2022, the transition specialist sent an email to the director of the cooperative and others to report that he had just heard from HHI "with not good news." According to the transition specialist, the request to bring the student back to HHI had come "at the worst possible time for them." The transition specialist wrote that HHI "would like to continue the relationship with [the student], but the volunteer director had reported that she "would not be able to give [the student] the attention she deserves."

On March 22, 2022, the transition specialist sent an email to the parents to let them know that HHI was not going to be a workable placement option for the student for the foreseeable future as HHI shifted focus to "outside events to bolster their resources." Further, the volunteer director of HHI had informed the transition specialist that "she couldn't give [the student] the time she deserved" because of staffing issues. According to the email, HHI was open to future opportunities for the student, but for now, the transition specialist suggested that the team move ahead to "get a VR case opened, and look at possibilities at the elementary school."

The district asserts that the student has been provided with CBI and classroom instruction that have provided the student with the same services she would have received had she gone to HHI. As of the writing of this report, the student has never attended HHI and is not currently participating in any other volunteer/vocational placement outside of the school.

Summary and Conclusions

Both the parents and the district agreed that the community, not the classroom, was the best place for the student to develop some of the skills that she would need once she transitioned out of the school environment. Any number of community-based settings might provide an appropriate environment for that instruction. However, for a number of reasons, Heart to Heart International appeared at the outset to be an ideal volunteer/vocational setting for the student. The district and the parents agreed that HHI would serve as the volunteer/vocational placement for the student. The decision was documented in settlement agreements, through prior written notice, in the student's IEP, and in amendments to that IEP.

The student was scheduled to begin a placement with HHI on November 17, 2021 but was absent on her first day. Neither the school district nor the parent would have expected that the student would have had only that one day to work at the facility.

The hours of operation for HHI are controlled by the organization and are driven by the organization's response to the presence of disaster or humanitarian need around the world. As a result, the district could not guarantee that the student would have the opportunity to volunteer at the site on any given day. While it was anticipated that the student could at some point spend up to three hours a day at the facility if it was open, the district did not control the hours of operation established by HHI. HHI shut down its operation in December 2021. The first day the student would have been able to return to the site would have been February 7, 2022.

In December 2021, when HHI was closed, the parents had asked the district for a back-up plan and had offered the name of another possible volunteer site – knowing only that the agency (ScrapsKC) had been covered in a local news show. The transition specialist conducted a worksite evaluation and believed that ScrapsKC could work well for the student, who could have started with the agency in early February. However, the parents objected to the ScrapsKC setting and to other school-based options.

As a private entity, HHI was able to establish its own requirements with regard to Covid vaccination. While the district did not require vaccination as a condition of employment for the student's 1:1 paraeducator or her 1:1 nurse, HHI could – and did – require proof of vaccination for anyone entering the facility as the transition specialist learned at the end of January 2022. Once the district had been informed of the HHI vaccination requirement and became aware that the two staff members supporting the student on a daily basis were not vaccinated, the district began looking at options including a change in staff assignments.

The student was to go to HHI with vaccinated staff beginning on March 28, 2022, but when the transition specialist reached out to HHI on March 11, 2022 to confirm the student's start day, he learned that HHI had shifted their priorities and no longer were able to offer the student a position. The transition specialist notified the parents of this new complication on March 22, 2022. The parents continued to state their objections to both the ScrapsKC and to other school settings as alternative sites.

Typically, a change in the ***setting*** in which a student's services are delivered would not require either prior notice or the written consent of the parent so long as the educational environment for the provision of special education (in this case, the community) remained unchanged. However, in this case, the parties had on numerous occasions confirmed that services were to be delivered specifically at HHI. That specificity restricts the district's ability to shift the setting for service delivery to another site without first providing the parents with prior notice.

The student has not – for reasons that were in some instances beyond the control of the district – received the HHI-based services called for in her November 3, 2021 IEP, in the January 26, 2022 amendment to that IEP, in settlement agreements, and prior written notice. The district took steps to secure a position for the student in an alternate setting but stopped that process when the parents objected. Instead, the district continued providing other community-based experiences for the student such as outings to Walmart or Target.

Since November 22, 2021, school has (at the time of this report) been in session for a total of 16 weeks. The student has been absent for three of those weeks and an additional two days. During that period, the district failed to provide the volunteer/vocational services at HHI that were specified in the student's November 3, 2021 IEP and related documents and failed to develop alternative settings when it became clear that the availability of HHI was limited. A violation of special education statutes and regulations has been identified.

Additional Comments

It is not the responsibility of the parents to come up with the solution to the problem that occurred at HHI. It is the responsibility of the district to develop and implement a plan to address the student's transition needs and to modify that plan with input from the parents when the situation demands change. However, when determining compensatory services to address the unavailability of the HHI setting, the investigator cannot compel the district to provide access to a facility over which it has no control. Rather, it will be up to the district to determine an appropriate community-based setting where services to the student can be delivered.

Issue Two: The district failed to provide the Community Based Instruction (CBI) specified in the student's IEP.

Parents' Position

It is the position of the parents that the district failed to provide the amount of CBI services specified in the student's November 3, 2021 IEP. According to the parents, the district has agreed to provide the student with 1440 minutes of compensatory CBI services in addition to the "280 minutes per week" of CBI services specified in the student's November 2021 IEP. The parents contend that, as of February 25, 2022, the district had failed to provide a total of 1,065 minutes of CBI services.

District's Position

It is the position of the district that all required CBI-related services have been provided for the student.

Investigative Findings

As noted above under Issue One, the parents and the district developed a settlement agreement in October 2021 to resolve a dispute over the district's provision of special education and related services - including CBI – that arose prior to the 2021-22 school year. The parties agreed that the district would, during the 2021-22 school year, provide 240 minutes of CBI services to the student above and beyond the services required by the student's current IEP. The provision of compensatory CBI services was to be documented in a communication log.

The district did not provide CBI opportunities at the start of the 2021-22 school year. When the IEP team met for an annual IEP review on November 3, 2021, the special education teacher reported that she planned to begin CBI outings for her students on November 17, 2021. The parties discussed the provision of additional compensatory CBI services to address services missed prior to November 12, 2021 and agreed that 1440 minutes of compensatory services would be provided during the 2021-22 school year in addition to the 240 minutes previously agreed to by the parties.

The plan for the delivery of these additional services was spelled out in a prior written notice form emailed to the parents on November 5, 2021. According to the prior written notice, the 1440 minutes of compensatory service would be delivered in 60 minute per week increments over 24 weeks during the 2021-22 school year. The prior written notice also included the statement that the student would "continue to receive her regular community based instruction service minutes as outlined in the 11-3-21 IEP."

At the November 3, 2021 meeting, the team reviewed a proposed IEP. That document was provided by the parents in their complaint. That version of the IEP included two references to Community Based Instruction. The first showed that the student was to receive "100 minutes" of CBI services one day a week. The second shows that the student is to receive "90 minutes" of CBI services one day a week.

However, according to the "Meeting Summary" for the November 3, 2021 meeting, changes were made to that initial version of the document. The summary contained the following statement:

> Community-based instruction trips have not occurred yet this year. [The special education teacher] plans to have trips starting the week of November 15-19. Account for past weeks that have not been occurring [8 weeks, 1440 total minutes, 60 minutes for 24 weeks] – will address in PWN. Change line for CBI to 90 minutes, 2 times weekly.

The "Community" portion of the "Needed Transition Services" section of the student's November 3, 2021 IEP contains the following statement:

> "[The student] will participate in community based instruction weekly."

In a March 28, 2021 telephone call with the investigator, the parent confirmed that the IEP submitted along with this complaint had been modified to require two ninety minute CBI opportunities per week.

On December 14, 2021, the attorney for the parents sent a letter to the attorney for the school district alleging that the district had failed to provide the parents with an agreed-upon log documenting the "date, start time, end time, place, staff/outside party providing the additional instruction/services, and a description of the additional service or instruction provided…on a weekly basis." This documentation was to be in addition to a home/school notebook being used to provide communication between the parents and the district.

The parents and the district provided the investigator with a spreadsheet entitled "Additional Services Log" which includes documentation of the CBI activities for the student beginning on November 17, 2021. The parent noted that the log was updated after the filing of this complaint and asserts that the data in the log does not in every case mirror the information recorded in the home/school communication notebook. Those discrepancies will be discussed below.

In recording the CBI opportunities provided to the student, the district provides a total of the number of CBI minutes delivered and breaks out minutes in categories designated as "settlement," "additional IEP," and "180 IEP" used to derive that total. The log includes minutes for CBI activities that would have been available to the student had she been in attendance on a given day even though the student was actually absent. The district also includes minutes for days when CBI opportunities would have been offered had school not been cancelled due to "snow days."

Generally, CBI opportunities were scheduled on Wednesday, Thursday, and Friday of the week. Based upon information provided by the district and the parents, the investigator calculates that, the district has provided a total of 3,355 minutes of CBI opportunities during the period starting with the week of November 15, 2021 and ending the week of March 21, 2022.

Calculating on the basis of two 90-minute CBI services per week, plus 60 minutes of additional services per week as agreed upon by the parties, times 16 school weeks, the district would have been required to provide 3,840 minutes of CBI. However, as noted above under Issue One, the student has been absent on some days when CBI outings were conducted. Additionally, the district experienced 3 "snow days" that kept scheduled outings from occurring. School was in session for half days only on

December 16 and 17, 2021, changing the schedule on two days when CBI outings would have been conducted. During the week of February 13, 2022, there was no school on two of the days CBI trips were normally scheduled, and there was an "early release" that changed the schedule for the third day.

The parent has provided information regarding discrepancies between the log and home/school communication notebook that reduce the number of CBI minutes actually provided by the district by 200 minutes.

When allowing for the times CBI services were available but the student was not present, and when considering days when school was cancelled due to a snow event on a typical CBI day, the district should have been expected to provide 3,000 minutes of CBI services. Adding 200 minutes for discrepancies as shown by the parents' data, the district's expected total would be 3,200 minutes, 155 minutes less than the total number of minutes the district has actually made available to the student. The district was also obligated under their October 2021 settlement agreement to provide an additional 240 minutes of CBI over a 24-week period (an average of 10 minutes per week or 150 minutes to date).

Conclusions

Based upon evidence provided by both parties in this complaint, the district has provided the total number of minutes of CBI opportunities that were required by the student's November 3, 2021 IEP and two additional settlement agreements. A violation of special education statutes and regulations is not substantiated on this issue.

Additional Comments

In a telephone call with the investigator on March 31, 2022, the parent reported that the district had not provided CBI opportunities to the student for the week of March 28, 2022 due to the absence of the student's assigned 1:1 paraeducator and/or 1:1 nurse. The district is reminded that these are opportunities that will need to be "made up" since staffing absences cannot be the reason a student's services are not delivered.

Issue Three: The district has not consistently allowed the student to participate with non-disabled peers during lunch as required by her IEP.

Parents' Position

The parents contend that comments made to the student's mother by the student's 1:1 paraeducator and 1:1 nurse suggested that the student has not routinely been allowed to go to the lunchroom

District's Position

The district contends that the student consistently eats lunch in the cafeteria.

Investigative Findings

The "Regular Education Participation" section of the student's November 3, 2021 IEP contains the following statement:

> [The student] will participate with non-disabled peers during lunch and passing periods (if her walks happen during this time).

In their complaint, the parents report that the student's 1:1 paraeducator and the student's 1:1 nurse told the student's mother about the student's participation in "Inclusion Day." According to the complaint, the staff members stated that they had taken the student "down to see the kids in the lunchroom." By report of the student's mother, the staff told her that they had thought the student wouldn't like the experience, "but she did." These comments led the parent to believe that the lunchroom opportunity was unusual and reflected a failure on the part of the district to provide the daily interaction with non-disabled peers called for in the student's IEP.

According to the district, the student routinely eats lunch in the lunchroom with non-disabled peers. According to the district, "World Inclusion Day" was a special day of celebration at the student's school. Inclusion Day, celebrated this year on March 2, 2022, was a day set aside to celebrate people of all abilities, backgrounds, age, race, religion, and gender being welcomed, accepted, and treated equally. On that date, the school made available a poster in the lunchroom that contained an "inclusion pledge" which students could sign. Members of the student's classroom went to the lunchroom during periods other than their regular lunch periods to join other lunch groups for the celebration.

Summary and Conclusions

This investigation did not find any evidence to support the parents' contention that the district has failed to provide the student lunch-time integration with non-disabled

peers. Inclusion Day was a special day of celebration at the school, and the student and her classmates participated in the activities of the day which included joining different groups of students in the lunchroom.

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

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, violations occurred with regard to 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) which require that the district provide a FAPE to students by implementing their IEPs as written.

Therefore, USD #203 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with

    - 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written and by providing the student with appropriate CBI opportunities.

2) a) No later than 40 days after the date of this complaint, USD #203 shall submit to SETS for review and approval a plan for the delivery of 900 minutes of compensatory CBI services to this student in a community-based setting.

    These minutes are calculated on the basis of 60 minutes per week for 15 weeks – through March 25, 2022. While the IEP team had determined that time at HHI could be increased up to 3 hours per day, only one hour of compensatory services per week are required because the investigator has no way to determine when or if the student could have tolerated these extended hours.

    Unless or until the student's IEP is amended and CBI services through HHI are no longer included, an additional 60 minutes of compensatory services will be ordered for every week between March 25 and May 27, 2022 that the student

does not receive CBI at HHI up to a maximum total of compensatory services of 1,440 minutes.

The compensatory minutes of CBI instruction do not include travel time to and from the work site.

b) The district's plan must propose three setting options for the delivery of the student's CBI services so that back-ups can be identified should circumstances at the selected setting make that setting unavailable. All settings must allow for the student to practice the "put in/take out" skills listed in her November 3, 2021 IEP.

3) Within 10 school days of the date the plan for compensatory services has been approved by SETS, the district shall present the plan to the parent who will have the option of either accepting the plan as written, or accepting a portion of the plan, or rejecting it.

4) Within 5 school days of the date the plan is presented to the parent, the parents must notify USD #203 of their decision to accept or reject the plan.

5) Within 5 school days of receiving the parents' decision, USD #203 must notify SETS of that decision.

6) Further, USD #203 shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)

Further, USD #364 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:

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

2) 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

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

KANSAS STATE DEPARTMENT OF EDUCATION

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #392

ON MARCH 7, 2022

DATE OF REPORT APRIL 6, 2022

This report is in response to a complaint filed with our office on behalf of _____by her parents, _____ and _____ _____. In the remainder of the report, _____will be referred to as "the student" and _____ and _____ _____ will be referred to as "the parents" or "the father" or "the mother" respectively.

The complaint is against USD #392 (Osborne County Public Schools) who contracts with the North Central Kansas Special Education Cooperative (NCKSEC) to provide special education and related services to students enrolled in USD #392. In the remainder of the report, "USD #392," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on March 7, 2022 and the 30-day timeline ended on April 6, 2022.

Investigation of Complaint

Donna Wickham and Nancy Thomas, Complaint Investigators, interviewed the father by telephone on March 9, 2022 and Donna Wickham interviewed the father again on March 25, 2022.

USD #392 made the following school staff available for a Google meet interview with the Complaint Investigators on March 24, 2022:

- Cher Greving, Director of Special Education, North Central Kansas Special Education Cooperative (NCKSEC)
- Troy Langdon, Superintendent, USD #392
- Debra Hanson, Occupational Therapist, USD #392
- Alexis Warner, Speech Language, USD #392
- Bethany Remus, Elementary Counselor, USD #392
- Rebecca Rash, Special Education Teacher, USD #392

Donna WIckham also had phone calls with the LEA staff between March 9, 2022 and April 1, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigators reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic dated February 9, 2019
- Individualized Education Plan (IEP) and Staffing Notes dated November 9, 2020
- Prior Written Notice dated November 9, 2020
- IEP Goal Progress Report dated May 6, 2021
- IEP Goal Progress Report dated May 14-15, 2021
- Request for Consent for Evaluation or Reevaluation dated September 9, 2021
- IEP Goal Progress Report dated October 15, 2021
- Email dated November 8, 2021at 9:42 A.M. written by the Bethany Remus, Elementary Counselor to the student's IEP team sharing Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic
- Tri-Annual Evaluation Report dated November 9, 2021
- Individualized Education Plan (IEP) and Staffing Notes dated November 9, 2021

- Phone notes from call between parent and LEA dated November 10, 2021
- Number identification data dated November 10, 2021- December 10, 2021
- Student's Progress Monitoring dated November 10, 2021 - November 9, 2022
- Vowel Digraph Data dated November 10, 2021- January 26, 2022
- Email dated November 11, 2021 at 7:22 P.M. from Parents to Director of Special Education regarding Cognitive testing and November 15, 2021 at 2:59 P.M.
- Email dated November 15, 2021 at 2:59 P.M. from Director of Special Education to parents regarding Cognitive testing and
- Email dated November 15, 2021at 2:15 P.M. from Director of Special Education to special education teacher regarding Dyslexia conference
- Email dated November 17, 2021at 12:23 P.M. from parents to Director of Special Education regarding Dyslexia Assessment
- Email dated November 17, 2021 at 1:30 P.M. from Tara Marshall, Herndon Speech-Language-Hearing Clinic to Rebecca Rash discussing 2021 IEP draft
- Email dated November 18, 2021 at 1:39 P.M. from USD#392 school psychologist to Tara Marshall, Herndon Speech-Language-Hearing Clinic discussing release to review Herndon Speech-Language-Hearing Clinic evaluation
- Email dated November 19, 2021 at 12:47 P.M. from Director of Special Education to Rebecca Rash, Special Education Teacher discussing release to review Herndon Speech-Language-Hearing Clinic evaluation
- Email dated November 22, 2021 at 1:56 A.M. from Director of Special Education to parents regarding Dyslexia Assessment
- Email dated November 23, 2021 at 9:45 A.M. from Rebecca Rash, Special Education Teacher to Tara Marshall from the Herndon Speech-Language-Hearing Clinic discussing draft 2021 IEP
- Email dated December 1, 2021 at 4:31 P.M. from Tara Marshall, Herndon Speech-Language-Hearing Clinic to Rebecca Rash, Special Education Teacher sharing curriculum resources and ideas for re-evaluation
- Email dated December 3, 2021 at 10:41 A.M. from Rebecca Rash, Special Education Teacher to Tara Marshall from the Herndon Speech-Language-Hearing Clinic replying to December 1, 2021 at 4:31 email about resources
- Email dated December 7, 2021 at 1:05 P.M. from general educator to IEP team
- IEP Goal Progress Report dated December 21, 2021

- Dyslexia: Best Targeted Interventions to Accelerate Literacy Success Attendance Certificate dated January 11, 2022 for Rebecca Rash, Special Education Teacher
- Teacher Note dated January 23, 2022
- Dolch Primer Data dated January 26, 2022 - March 21, 2022
- Email dated February 2, 2022 at 4:41 P.M. from Tara Marshall from the Herndon Speech-Language-Hearing Clinic to Rebecca Rash, Special Education Teacher checking on student progress
- IEP Amendment Between Annual IEP Meetings with Prior Written Notice and Request for Consent signed February 7, 2022
- Email dated February 8, 2022 at 10:45 A.M. from Rebecca Rash, Special Education Teacher to Tara Marshall from the Herndon Speech-Language-Hearing Clinic replying to February 2, 2022 at 4:41 P.M. about student progress
- Assessment Report from the Phillips Learning Center dated February 9, 2022
- Letter dated February 21, 2022 from Denice Kuhns, C-SLDS, CALT of the Phillips Learning Center to the parents
- Email dated March 4, 2022 at 8:58 P.M. from Rebecca Rash, Special Education Teacher to Tara Marshall from the Herndon Speech-Language-Hearing Clinic about re-evaluation meeting
- Email dated March 21, 2022 at 2:17 P.M. from elementary school counselor to School staff sharing Herndon Speech-Language-Hearing Clinic progress reports
- IEP Progress Review Meeting staffing notes March 31, 2022
- PWN dated April 1, 2022
- Kansas State Board of Education License for Rebecca Rash

Background Information

This investigation involves an 11-year-old female student currently enrolled in the fourth grade at Osborne Elementary School in USD #392. Her most recent reevaluation on November 9, 2021 determined she continued to be eligible for special education and related services under the exceptionality category of Learning Disabled.

The student received special education and related services in the preschool setting. The student began kindergarten one year behind her same-age peers. She was reevaluated in 2018 and the multidisciplinary team determined that the student's

exceptionality category would be Developmental Disability. She transferred to Osborne Elementary School during the 2018-2019 school year. USD #392 reevaluated the student in 2019 and changed her exceptionality category to Learning Disabled. The student is currently receiving special education and related services at Osborne Elementary School as well as attending the Herndon Speech-Language-Hearing Clinic and Phillips Fundamental Learning Center for supplemental instruction for a diagnosis of dyslexia.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised three issues that were investigated.

> ISSUE ONE: The USD #392, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consider parent-initiated evaluations to develop an appropriate IEP for the student during the last 12 months.

Positions of the Parties

The parents reported their daughter has a diagnosis of dyslexia and that they have paid for services at the Herndon Speech -Language-Hearing Clinic at Fort Hays State University and the Phillips Fundamental Learning Center in Wichita, Kansas to address concerns with academic progress since the student was in kindergarten. She was assessed or evaluated at both of these outpatient facilities for services and recommendations for instructional strategies, curriculum, and therapy. The parents indicated that both reports have been provided to USD #392; however, the student's IEPs were never changed to reflect those recommendations.

USD #392 reported they considered the 2019 parent-initiated evaluation from the Herndon Speech-Language-Hearing Clinic. In addition, the student's school team meets regularly with the staff at the Herndon Speech-Language-Hearing Clinic to coordinate services and improve interventions.

The district also reported that they received an Assessment Report from the Phillips Fundamental Learning Center and met March 31, 2022 to review the report and determine if any changes should be made to the IEP as a result of that review.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #392.

There were two parent-initiated evaluations shared with USD 392 during the past 12 months.

The first evaluation was the Herndon Speech-Language-Hearing Clinic Evaluation, which was completed on February 9, 2019. Although this evaluation falls outside the 12-month investigation window, USD #392 did not receive a copy of this evaluation for consideration until December 1, 2021.

The Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic dated February 9, 2019 was referenced in an email dated November 8, 2021 written by Tara Marshall, Assistant Clinic Coordinator of the Herndon Speech-Language-Hearing Clinic, to Bethany Remus, Elementary Counselor at USD#302. School staff reported the reference in the email marked the first time they were made aware that this parent-initiated evaluation existed. With consent of the parent, a copy of this evaluation report was provided to the LEA on December 1, 2021 and distributed to all members of the student's school team.

The parents indicated they did not physically share a copy of the February 9, 2019 report with school staff because they assumed the Herndon Speech-Language-Hearing Clinic would automatically send a copy to the district because of the release of information form they had signed allowing these two agencies to share information.

The LEA acknowledged that the February 9, 2019 report was not considered at the November 9, 2020 or November 9, 2021 IEP team meetings because USD #392 was unaware of its existence. However, school staff noted in an email dated November 5, 2021 written by Ms. Marshall to the parents documented that Ms. Marshall reviewed a draft copy of the November 9, 2021 IEP and provided feedback to the parents. On November 8, 2021, the parents shared this feedback with the IEP team for consideration in the development of the IEP when they forwarded Ms. Marshall's email to the entire IEP team. Although the staffing notes from the November 9, 2021 IEP team meeting do not specifically mention the February 9, 2019 Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic, the present level of that IEP states the student receives services from the Herndon Speech-Language-Hearing Clinic.

USD #392 acknowledged that the student's IEP team has not reconvened since receiving the February 9, 2019 Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic on December 1, 2021 in order to consider this parent-initiated evaluation.

The second parent-initiated evaluation shared with USD #392 as the Phillips Fundamental Learning Center Assessment Report, dated February 9, 2022.

The parent initially emailed a copy of the assessment report to Bethany Remus on February 22, 2022; however, this email went to Ms. Remus' spam folder. Following a conversation with Ms. Remus, Ms. Remus confirmed receipt of the assessment report in a March 2, 2022 email with Mr. _____. Ms. Remus forwarded a copy of the assessment report via email to the other members of the IEP team on that same date.

The IEP team met on March 31, 2022 to review the assessment report from the Phillips Fundamental Learning Center. The Staffing Notes from that IEP team meeting document a discussion of the assessment report and the follow up activities based on the report. USD #392 provided the parent with a Prior Written Notice and Request for Consent for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement and Request for Consent, dated April 1, 2022 that listed the Phillips Fundamental Learning Center Assessment as data used in the decision-making process for retaining services and goals in the student's IEP.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at C.F.R. 300.502(c)(1) and K.A.R. 91-40-12 state, "If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child."

In this case, the parent thought the February 9, 2019 Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic was automatically sent to the district in 2019 and believe the recommendations from the evaluation report should have been incorporated into the student's IEP once the district was provided with a copy of the report on December 1, 2022.

Even though USD #392 reported that the staff from the Herndon Speech-Language-Hearing Clinic regularly consulted with school staff and even provided written feedback for the November 9, 2021 IEP, they acknowledged that the February 9, 2019 Speech Language Evaluation Summary Report from the Herndon Speech-Language-Hearing Clinic was never considered by the student's IEP team after it was received by the district on December 1, 2021.

In addition, documentation and interviews showed USD #392 received a copy of the Phillips Fundamental Learning Center Assessment Report dated February 9, 2022 on March 2, 2022. An IEP team meeting was held on March 31, 2022 where the assessment report was discussed and considered as documented in the Staffing Notes dated that same date. As a result of the March 31, 2022 IEP team meeting, the parent was provided with a PWN dated April 1, 2022 that listed the Phillips Fundamental Learning Center Assessment Report as data used in the decision-making process for proposed changes in the student's IEP.

Based on the foregoing, a procedural violation of special education statutes and regulations is substantiated for failing to consider the results of the February 9, 2019

Herndon Speech-Language-Hearing Clinic evaluation obtained at private expense when it was shared with USD # 392 on December 1, 2021.

ISSUE TWO: The USD #392, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the IEP, as appropriate, to address lack of expected progress toward the annual goals during the 2021-22 school year.

Positions of the Parties

The parents reported that their daughter is not making any progress and is losing interest in school. They allege the district has no plan of action or sense of urgency in addressing their daughter's disability through her IEP.

The district stated that they are meeting the requirements of the IDEA by providing intensive instruction that is consistent with her learning needs and regularly assessing her progress in the classroom through data collection to monitor her progress towards her IEP goals. They reported the student's progress towards her IEP goals is reported to parents on a quarterly basis as required by the student's IEP. School staff indicated that when she does not make progress towards an IEP goal, the student's IEP is reviewed and revised, as appropriate. USD #392 noted that they regularly consult with the Herndon Speech-Language-Hearing Clinic.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #392.

The findings of Issue One are incorporated herein by reference.

Interviews and documentation found two IEP were in effect during the 2021-22 school, which began on August 19, 2021 in USD #392. The first IEP was developed on November 9, 2020 and the second IEP was developed on November 9, 2021. Both IEPs

included measurable annual goals and required that progress towards the IEP goals be provided to the parent on a quarterly basis.

The November 9, 2020 IEP included the following five goals:

1. By the end of the IEP year, when given 50 sight words from a Primer word list, the student will read the words with 80% accuracy 4 out of 5 opportunities. Baseline is 80% of sight works using observation and data
2. By the end of this IEP year, when presented with a list of 20 words with vowel digraphs, the student will correctly read the words with 80% accuracy in 4 of 5 trials. Baseline is 15 of 20 words or 75% using teacher observation and data
3. By the end of this IEP year, when given word problems in both addition and subtraction, the student will complete them with 80% accuracy, 4 out of 5 times. Baseline is listed at 0% based on teacher observation and data
4. By the end of the IEP year, when given numbers with 7, 8, or 9, the student will be able to identify numbers named by the teacher with 90% accuracy. Baseline is that she can identify these numbers with 72% accuracy through teacher observation and data
5. By the next annual IEP, during structured activities the student will demonstrate improved phonemic awareness by segmenting 4-5 phoneme words and deleting, adding, and substituting phonemes in 3-phoneme words with at least 80% accuracy. Baseline is notes at 0% with SLP data

The first quarter of the 2021-22 school year ended on October 14, 2021 and the IEP Goal Progress Report for that period showed the student made adequate progress towards Goal One but did not make adequate progress towards Goals Two, Three, Four, and Five.

The IEP team reconvened on November 9, 2021 and the IEP was reviewed and revised. The goals were updated, and a sixth goal was added as follows:

1. By the end of the IEP year, when given 20 sight words from a Primer word list, the student will read the words with 75% accuracy 4 out of 5 opportunities. Baseline is 50% of sight works using teacher checklist
2. By the end of this IEP year, when presented with a list of 10 words with vowel digraphs, the student will correctly read the words with 75% accuracy in 4 of 5 trials. Baseline is 25% on vowel digraphs using teacher checklist

3. By the end of this IEP year, when given 4-word problems in both addition and subtraction, the student will complete them with 75% accuracy, 4 out of 5 times. Baseline is listed at 0% based on teacher checklist
4. By the end of the IEP year, when given 10 numbers the student will be able to identify 7, 8, or 9 with 75% accuracy. Baseline is 30% accuracy through teacher checklist
5. By the next annual IEP, during structured and unstructured activities the student will produce voiced and unvoiced /th/, /s/, and /z/ with an average of at least 80% accuracy at the sentence level. Baseline is voiced /th/ 25%; voiceless /th/ 0%; /s/ 27%; /z/ 53% with SLP data
6. By the end of the IEP, during structured and unstructured activities, the student will improve phonological awareness skills through various phonemic awareness tasks (phoneme, deletion, addition, substitution, segmentation, isolation, and rhyme recognition) with at least 80% accuracy and minimal cueing. Baseline is Phoneme deletion 3/12 (25%); Phoneme addition 2/6 (33%); Phoneme Substitution 3/6 (50%); 4-phoneme segmentation 5/13 (38%); Phoneme isolation 5/12 (42%); Rhyme recognition 1/6 (17%)

The second quarter of the 2021-22 school year ended on December 21, 2021. The IEP Goal Progress Report for that period showed the student made adequate progress toward all six goals.

The third quarter of the 2021-22 school year ended on March 10, 2022. The IEP Goal Progress Report for that period showed the student continued to make adequate progress toward all six goals.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a)(2) require that each student's IEP includes a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports of the student's progress towards meeting those annual goals will be provided to the parent.

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(b)(1) require school districts to review the student's IEP periodically, but at least annually, to determine whether the annual goals are being achieved and to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals.

In this case, there were two IEPs in effect during the 2021-22 school year. Both IEPs included measurable annual goals and required that progress towards the IEP goals be provided to the parent on a quarterly basis.

Interviews and documentation found that the parents were provided IEP Goal Progress Reports on a quarterly basis during the 2021-22 school year. The IEP Goal Progress Report for the first quarter was dated October 14, 2021 and showed that the student only made adequate progress towards one IEP goal. USD #392 reconvened the student's IEP team on November 9, 2021 and, as a result, the IEP goals were updated, and a sixth goal was added.

The IEP Goal Progress Report for the second quarter was dated December 21, 2021 and showed the student was making adequate progress toward the six IEP goals. The IEP Goal Progress Report for the third quarter was dated March 10, 2021 and showed the student was continuing to make adequate progress toward the six IEP goals.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to review and revise the IEP, as appropriate, to address lack of expected progress toward the annual goals during the 2021-22 school year.

ISSUE THREE: The USD #392, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide appropriately certificated and trained special education staff, specifically the special education teacher, to provide the special education services to the student during the 2021-2022 school year.

Positions of the Parties

The family contend that the special education teachers do not have the proper training to treat the students' condition of Dyslexia. They further believe that the district does not have a Dyslexia specialist available to their daughter and, as a result, they have sought out and obtained more appropriate supplemental services for the student through the Herndon Speech-Language-Hearing Clinic and the Phillips Fundamental Learning Center .

The district reports they are in compliance with IDEA as the student's special education teacher is licensed in Kansas to teach students with high incidence disabilities. Teachers who are licensed to teach students with high incidence disabilities are considered to be appropriately trained to teach students with specific learning disabilities, which includes dyslexia, by the Kansas State Board of Education. Further, USD #392 indicated that Ms. Rash, the student's special education teacher has received additional training specifically for working with students diagnosed with dyslexia.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #392.

There were two IEPs in effect during the 2021-22 school year dated November 9, 2020 and November 9, 2021. No specialized training for school personnel is required by either IEP.

The district's website shows Ms. Rash as teaching "Interrelated Elementary "during the 2021-22 school year at Osborne Elementary School.

Ms. Rash was issued a teaching license from the Kansas State Board of Education allowing her to teach Art to students aged pre-kindergarten through twelfth grades and special education for high incidence students in kindergarten through twelfth grade. Her teaching license will expire on April 5, 2025. She completed her master's degree in high incidence special education from Emporia State University in 2021.

The Special Education Director reported that Ms. Rash attended the annual teacher training on dyslexia required by the KSDE for the 2020-21 and 2021-22 school years.

In an email exchange between the Director of Special Education at USD #392 and parents regarding dyslexia assessment dated on November 17, 2021 and November 22, 2021, Ms. Greving explained,

> Under IDEA guidelines, Dyslexia falls under the category of the specific learning disability exceptionality. Special education teachers address dyslexia when providing support and instruction to meet the needs of a student *w*ith a specific learning (reading) disability. NCKSEC does not have an expert in the area of dyslexia, however, our special education teachers in USD 392 are well trained and adept to address reading disabilities of their students. Each school district within our Interlocal is adhering to the dyslexia screening recommendations of KSDE. Our special education teachers in USD 392 have attended two trainings in the area of dyslexia. One in August of 2020 and the other this past August of 2021.

Emails dated November 17, 18, 19, and 23, 2021; December 1 and 3, 2021; February 2 and 8, 2022; and March 4, 2022 between members of the student's IEP team and Ms. Marshall from the Herndon Speech-Language-Hearing Clinic as well as interviews with the district staff found that the student's IEP team is regularly corresponding with Ms. Marshall for resources and to ensure they are coordinating services and instruction at school with those provided at the Herndon Speech-Language-Hearing Clinic.

The Sonday Curriculum, a curriculum recommended for students with dyslexia, was adopted for use with the student in December 2021. Ms. Rash completed the publisher's DVD training to ensure reliable use of the curriculum on or around December 16, 2021.

Ms. Rash attended a five-hour training on dyslexia on January 11, 2022 in Wichita. She was provided a certificate of attendance for "Dyslexia: Best Targeted Interventions to Accelerate Literacy Success."

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.156 require each state education agency (SEA) to establish and maintain qualifications to ensure that personnel necessary to provide special education and related services in accordance with the IEP are appropriately and adequately prepared and trained.

The KSDE details personnel qualifications in the 2021-22 Special Education Reimbursement Guide State for Categorical Aid. Per the *Special Teacher Reimbursement Licensing Requirements* chart in Appendix C, a Licensed Personnel Report for High Incidence Special Education is required for the teacher of an interrelated program and is necessary to teach students with learning disabilities.

The term "learning disabilities" is defined in K.A.R. 91-40-1as follows:

> Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Dyslexia is a specific learning disability. In recent years, much debate has occurred regarding dyslexia and whether it is covered under the Individuals with Disabilities Education Act (IDEA) and in Kansas. The IDEA, as well as Kansas statute and regulations, recognize dyslexia as a disability as stated within the definition of specific learning disability.

In this case, Ms. Rash is assigned as the interrelated classroom teacher at Osborne Elementary School in USD #392. She holds a current teaching license issued by the KSDE allowing her to teach special education for high incidence students in kindergarten through twelfth grade. Based upon that information Ms. Rash meets the KSDE requirements to be the teacher of an interrelated program as well as students with learning disabilities.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to provide appropriately certificated and trained special education staff, specifically the special education teacher during the past twelve months because Ms. Rash meets the SEA requirements to be considered appropriately and adequately prepared and trained to teach students with specific learning disabilities, including those students with dyslexia. Further, the district continues to seek out opportunities to improve expertise in teaching students with dyslexia.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following area:

A. Federal regulation implementing the IDEA at C.F.R. 300.502(c)(1) and K.A.R. 91-40-12 state, "If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child."

In this case, USD#392 received a copy of the February 9, 2019 Herndon Speech-Language-Hearing Clinic Evaluation Report, which was obtained at parent expense, on December 1, 2021. USD #392 acknowledged that it failed to meet the IEP team to consider the results of that 2019 evaluation after receiving it on December 1, 2021. While USD#392 erred in following IDEA procedure, it is noted that the information contained in the report was considered and documented in ongoing email documentation as well as the revisions made to the student's IEP.

Based on the foregoing, USD #392 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #392 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) Federal regulations at C.F.R. 300.502(c)(1) which requires school districts to consider independent educational evaluation results in any decision made with respect to the provision of FAPE to the child."

2. It is noted that noncompliance was identified for not considering the Speech Language Evaluation Summary Report from the Herndon Clinic at an IEP team meeting after December 1, 2021 when a copy of the report was received by USD#392. However, it also noted that the district received a copy of the Phillips Fundamental Learning Center assessment report on March 1, 2022 and held an IEP team to consider that report on March 31, 2022. The IEP team considered the Phillips Fundamental Learning Center assessment report submitted by the family, and documented it as part of a PWN and in staffing notes. Therefore, the district has subsequently demonstrated compliance with C.F.R. 300.502(c)(1). For this reason, no individual or systemic corrective action is ordered at this time.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Donna Wickham

Donna Wickham, Complaint Investigator

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON MARCH 8, 2022

DATE OF REPORT APRIL 13, 2022

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

The complaint is against USD #259 (Wichita Public Schools). In the remainder of the report, "USD #259," the "school," the "district" or the "local education agency (LEA)" shall refer to this responsible public agency.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on March 8, 2022; however, due to the district's spring break, the 30-day timeline to investigate this complaint was extended and now ends on April 13, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on March 10 and March 31, 2022 and again on April 3, 2022. It is noted that while the student's biological mother, _____, participated in the initial interview, she was not a party to the Formal Complaint.

USD #259 made the following school staff available for a telephone interview on March 29, 2022:

- Amy Godsey, Mediation and Due Process Supervisor
- Lura Jo Atherly, Principal for Stucky Middle School
- Tricia Loehr, Assistant Principal for Stucky Middle School

- Keith Butler, IEP Manager
- Elizabeth Quinn, Speech/Language Pathologist (SLP)
- Belinda Tummons, School Counselor

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. It is noted that the parents and the district both provided numerous documents including emails, meeting notices, discipline records, special education records from prior school years, a mask exemption, newsletters, and Facebook posts related to allegations that were not included in the Formal Complaint Request Form received by the KSDE on March 8, 2022 and, while all of this documentation was reviewed, it was not all found to be relevant to the allegations that were investigated. The parents are aware that they may file additional Formal Complaint Request Forms to address their additional concerns.

The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Educational Program (IEP) dated May 13, 2021
- May 13, 2021 IEP-at-a-Glance, printed on August 12, 2022
- Copy of the "I need a BREAK!" card dated May 2021
- 2021-22 School District Calendar for Stucky Middle School
- Parents' Access Data Sheets for ParentVUE, the electronic system for parents to access and view school documents
- USD #259 Technical Assistance document titled "Beginning of the Year Checklist for Secondary: Opening Procedures for IEP Managers", dated June 2021
- USD #259 Technical Assistance document titled "How to Create a Progress Report", dated August 2021
- Copy of the "Purposeful Pause Pass" card dated August 2021
- Email dated August 12, 2021 at 5:42 p.m. written by Elizabeth Quinn, Speech/Language Pathologist, to the student's seventh grade general education teachers
- Email dated August 31, 2021 at 11:28 a.m. written by Ms. Quinn to Belinda Tummons, School Counselor
- Email dated August 31, 2021 at 12:54 p.m. written by Ms. Tummons to Ms. Quinn

- Email dated September 31, 2021 at 2:48 p.m. written by Ms. Quinn to Ms. Tummons
- Email dated January 20, 2022 at 11:34 a.m. written by the mother to the school team
- USD #259 Technical Assistance document titled "Using ParentVUE", dated January 30, 2022, noting that parents can view IEPs and IEP goal progress report in ParentVUE
- Email dated February 9, 2022 at 11:05 a.m. written by the mother to Ms. Quinn
- Email dated February 10, 2022 at 10:43 a.m. written by Ms. Quinn to the parents
- Email dated February 15, 2022 at 1:00 p.m. written by Tami Allen, Co-Executive Director of Families Together, the federally funded Parent Information Center in Kansas, to the mother
- Email dated February 15, 2022 at 1:13 p.m. written by the mother to Ms. Allen
- Audiotape of the February 16, 2022 IEP team meeting, recorded by the parents
- IEP Amendment dated February 16, 2022 and agreed to by the parent in writing on March 21, 2022 to increase counseling services and add transportation as a related service
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent for a functional behavioral assessment (FBA) dated February 16, 2022 and signed by the father on February 23, 2022
- Email dated February 16, 2022 at 2:45 p.m. written by Ms. Tummons to the student's school team
- The Therapy Center Psychological Evaluation dated February 18, 2022 written by Sarah Rogers, Licensed Professional Counselor
- Email dated February 19, 2022 at 11:05 a.m. written by the mother to Ms. Quinn and Ms. Tummons
- Email dated February 22, 2022 at 12:36 p.m. from Ms. Tummons to the school team
- Copies of the student's assignment notebook / agenda for February 3, 4, 10, 11, 14, 15, 16, 17, and 18, 2022
- Email dated March 1, 2022 at 11:00 a.m. written by the mother to the school team
- Email dated March 2, 2022 at 1:24 p.m. written by the mother to Keith Butler, IEP Manager

- Email dated March 2, 2022 at 2:10 p.m. written by Lura Jo Atherly, Principal, to the mother
- PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated March 3, 2022
- Email dated March 4, 2022 at 9:34 a.m. written by the mother to Ms. Quinn and copied to the school team
- Email dated March 4, 2022 at 9:39 a.m. written by the mother to Mr. Butler; Debbie Openheimer, Tier 3 Behavior Specialist; and Ms. Atherly
- Email dated March 4, 2022 at 3:03 p.m. written by the mother to
- Email dated March 7, 2022 at 4:26 p.m. written by Mr. Butler to the parents
- Email dated March 8, 2022 at 10:40 a.m. written by Ms. Allen to the mother
- PWN for Identification, Initial Services, Placement, Change in Services, Change in Placement and Request for Consent to increase counseling services, add transportation as a related service, and to add a sensory break and a bathroom break as a classroom accommodation dated March 3, 2022 and signed by the father on March 23, 2022
- Copies of the "Restroom Break", "Rain Delay", and "Alternate Passing Period" cards dated February 2022
- Response to the Allegations dated March 23, 2022 written by Ms. Tummons
- Summary of accommodations provided to the student dated March 24, 2022 written by Mr. Butler
- PWN for Evaluation or Reevaluation and Request for Consent for an occupational therapy (OT) and speech/language evaluation dated March 24, 2022 and not signed by the parent
- Student's Class Schedule for Quarters 1-4 of the 2021-22 school year
- General Education Teacher Report Pages (TRPs)
- IEP Goal Progress Reports dated May 25, 2021, October 10, 2021, December 17, 2021, and March 11, 2021
- Parent Contact Log dated August 31, 2021 through March 24, 2022
- Email dated March 25, 2022 at 8:27 a.m. written by the mother with responses to questions from school team members
- Response to the Allegations dated March 25, 2022 written by Amy Godsey, Mediation and Due Process Supervisor

Background Information

This investigation involves a 12-year-old male student enrolled in the seventh grade at Stucky Middle School in USD #259. His most recent special education evaluation was conducted on May 13, 2021 and the multidisciplinary team, including the parents, determined that he continued to eligible for special education and related services under the exceptionality category of Autism.

The student was first diagnosed with Autism at age five and was initially found eligible for special education and related services during kindergarten in USD #508. He transferred to the Savanah R-III School District when the family moved to Missouri and continued to receive special education and related services in first through fifth grades. The family moved back to Kansas and the student transferred to Stucky Middle School USD #259 at the beginning of sixth grade. He is currently in the seventh grade and receives special education services support in the general education setting. In addition, the student receives 15 minutes per week of counseling and 40 minutes per week of speech/language therapy.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parents raised four issues that were investigated.

> ISSUE ONE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically by not providing the required classroom accommodations, during the 2021-22 school year.

Positions of the Parties

The parents indicated that the student was successful during the 2020-21 school year at Stucky Middle School when his IEP was being implemented. However, there has been a significant increase in the student's inappropriate behavior both at school and home because the accommodations in the student's IEP have not been provided during the entire 2021-22 school year.

They stated that the school staff at Stucky Middle School is unable and/or unwilling to provide shortened assignments, to allow extended time to complete homework/classwork, to provide para/teacher support to maintain the student's assignment notebook/agenda, to read directions to the student, to provide an alternate setting for small group work, and to allow the student to use a break pass when he is feeling overwhelmed. The parent also noted that the student has not received the scheduled 15 minutes per week of counseling services required by the IEP during the 2021-22 school year.

The parents believe the failure of USD #259 to implement the student's IEP has resulted in significant regression of the student's social and emotional behavioral skills. The parents stated that the student is constantly being bullied and harassed by his peers at Stucky Middle School which has resulted in the student threatening suicide and pulling out five of his own teeth over the course of this school year.

The parents have made school staff aware of the bullying and harassment on multiple occasions but reported that nothing has been done. On January 20, 2022, the mother sent an email to the principal, the school counselor, and the SLP stating,

> I wanted to make everyone aware that the student is continuing to encounter the student that is telling him that he should "kill himself" or "just die" in Robotics and also in class.

On March 2, 2022, the mother sent an email to the IEP Manager and principal stating,

> The student had to ride the regular bus home, and upon arriving home his father witnessed a complete and total meltdown from the student. Three boys taunted the student the majority of the ride home saying things like "You have a reverse Peppa pig face", "You have to wear special shoes because you don't know how to tie your laces", "I am going to come to your and F___ you mom", cussed him out, and many other things regarding his

> facial appearance. The three boys were allowed to sit on the floor behind the last seat on the bus and taunt the student.

On March 4, 2022 at 9:33 a.m., the mother emailed the principal, the school counselor, and the IEP Manager to request assistance and support for her son because he had called her upset and crying in the bathroom because he stood during the Pledge of Allegiance and the other students were laughing at him.

Also on March 4, 2022, the mother shared additional concerns with school staff in an email stating,

> It looks like the student had an issue in Ms. Probasco's [Literacy teacher] class again. We have serious concerns regarding the way she speaks with our special needs student. Ms. Probasco has told the student to "shut up" when he has asked to make up work in the past, publicly humiliates him in from ot other students, repeatedly denies extensions on his assignments per his IEP, does not write in his agenda per his IEP, does not halve his homework per his IEP, told the student today he was not good at making friends and also asked him today why he didn't follow "her rules."

The parents recently requested the student be transferred to another middle school building within USD #259 where he can have a "fresh start" with his IEP being implemented as written; however, this has not yet occurred because USD #259 procedures require the new school building to "accept" the transfer.

Representatives of USD #259 believe the accommodations on the student's IEP are being implemented because the student is making passing grades in all of his classes. Keith Butler, the IEP Manager stated,

> I expect that all accommodations are followed by teachers and paras in the classroom. On the converse, if I see that a student's performance is falling or grades drop, follow-up is completed to determine if accommodations/modifications are being followed in the student's or other student's classes and if necessary revised measures are addressed and proposed. The student has maintained good grades, passing grades in all classes, until failing in his pass/fail intervention classes. Verbal inquiry with teachers on or about October 10, before Christmas break and the week of March 7-10, 2022 was conducted to understand if

accommodations were being implemented correctly, any changes suggested, and to determine the student's progress in individual classes. Before Parent Teacher conference (PTC), the student was identified by Ms. Probasco and Mr. Bixler in their intervention classes that he was "failing" due to not completing assignments. This was also discussed with parents at March 3 PTC with myself. Explained that these classes are self-paced and individualized for students at their grade level progress. With coaching and refocusing, the student did a great job completing assignments and brought Fs up to Ps in both classes before the cutoff for report cards for 3rd quarter.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #259.

The first day of the 2021-22 school year was August 12, 2021.

The IEP in effect during at the beginning of the 2021-22 school year was developed on May 13, 2021 and requires 15 minutes per week of counseling as a related service as well as the following nine classroom accommodations:

Accommodation	Rationale	Frequency	Location	Duration
Alternative setting	Student gets overwhelmed in large groups and needs small group setting	During work time in class	Small group setting away from the large group	For the duration of the activity
Read test to student	The student needs a human reader to understand questions and responses	During quizzes and tests	In small group of individual testing location	Until assessment is completed
Extended time or shortened assignments	Gets frustrated easily and will shut down if given time limits	All assignments and assessments	In the general education classroom	100% for daily assignments and assessments, up to 3 days for long term activities or repetitive tasks reduced by half
Directions given in a variety of ways	In order to understand material, student	All directions	In the general education classroom	For the duration of the reading activity

	will may [sic] need to have directions read to him or have him read them to the teacher/para or have an electronic reader read directions and texts to him.			
Frequent reminders of rules	With the student's exceptionality, he will need gentle reminders of class and school rules to reinforce proper behaviors	At the start of the activity or when a behavioral redirection is required	In all school settings	Provide reminder and then wait before providing another prompt.
Check often for understanding	In order to make sure the student understands materials, assignments, etc. in class he will need someone to verify that he understands what is needed.	Dailey for each activity	In the general education classroom	Until the student understands expectations
Preferential seating or proximity control	He gets unfocused easily and will need to be in close proximity to the para or teacher	Daily in each class	All classes, in close proximity to the staff member	Throughout the class period.
Maintain assignment notebook / agenda	He needs to have written access to assignments when given of which a para can write them in his notebook to take home	Daily in each class	In the general education classroom	Until all homework has been recorded
Use of a break pass	The student gets frustrated or overwhelmed when too much work is done for long periods of time. The student will have a break pass which he can show to the teacher to take a break.	Daily in each class period	In the general education classroom	Not to exceed 5 minutes

The IEP included multiple accommodations. The investigator will not address each of these accommodations separately because the parent is not requesting compensatory

services. The parent is requesting that student be transferred to a school that will address his exceptionality appropriately. Therefore, the investigator need only make conclusions on the central allegation in this issue, which is that the district has not provided the classroom accommodations specified in the student's IEP. For this purpose, the Complaint Investigator narrowly focused on two of the accommodation that appeared to have the most obvious multiple sources of documentation: 1) Maintain assignment notebook / agenda; and 2) Use of a break pass.

The parents provided copies of the student's assignment notebook / agenda for eight days in February. On Thursday, February 3, 2022, notes were written for one class period and indicated no homework and to study for the test. On Friday, February 4, 2022, notes were written for the same class period and again reminded the student of a test the next Tuesday. On Thursday, February 10 and Monday, February 14, 2022, the pages were blank. On Tuesday, February 15 and Wednesday, February 16, 2022, notes were written for one class period and indicated the student subtracted integers and multiplied integers on each day respectively. Both Thursday, February 17 and Friday, February 18, 2022 were left blank.

The Art Teacher reported that the student "struggles to stay focused and finish a task" and that he needs reminders to turn in assignments on the Teacher Report Pages document. The Math Intervention Teacher indicated the student needs to apply his skills in his class work while the Literacy Teacher stated, "He spends more time worried about what everyone else is doing. He will waste an entire class focused on everything but class." The Science Teacher noted the student only works under "direct supervision" and requests to take work home for homework. In regards to the Social Studies class, Mr. Butler stated, "The student, like all middle school students, needs to organize, write down assignments and strategize how tackle them in his agenda when needed for work that needs to go home."

USD #259 staff pointed out that the accommodation in the IEP does not require the para to write in his assignment notebook / agenda; instead the accommodations only states the para "can" write in the notebook. While that is a correct reading of the IEP, it does not negate the requirement to provide the student with written access to assignments by maintaining an "assignment notebook/agenda."

At the beginning of the school year, there was some confusion about how the break passes worked. Ms. Quinn noted in the August 31, 2021 email to Ms. Tummons at 11:28 a.m.,

> I was hoping you could provide some clarification on the student's break pass. In his IEP it states that the student can utilize the pass every class period for no more than 5 minutes. The student has shared w/ the mother that he's only allowed 6 breaks/week. I know our policy this year is different than last year in that students are allowed to use the restroom during class. The student believes that a restroom break counts against him if you will as one of his breaks w/ his break pass. Perhaps this is something that needs to be reviewed with his teachers, too?

Ms. Tummons clarified in an email dated August 31, 2021 at 12:54 p.m. that she was providing counseling to the student on Fridays and provided him a "Purposeful Pause Pass" so that he could go to visit with her from any class. She also indicated that she "checks in" with the student every morning and during lunch.

On January 14, 2022, Ms. Tummons unilaterally changed the break pass procedure because the student has had numerous instances of coming to the school counselor's office to report multiple students for their inappropriate behavior. Ms. Tummons stated, "Once I met with ALL of the students involved in each incident, I found that the student most often had started the confrontation and reported the other students for what he had actually done."

Ms. Tummons sent an email that same day to the student's teachers, support staff, and administration. She reported that the student's break card was removed from his agenda and his teachers were notified to keep an eye on his behaviors. If he wants to see a support staff member, he has been told that he has to email the person he wants to see and wait for that person to send a pass for him – when they are available to do so.

On February 9, 2022, the mother sent an email to Ms. Quinn and Ms. Tummons requesting that the break pass be reinstituted so he would be able to access help as

needed. The mother indicated that the "bullying and comments made at Stucky are becoming too much for him to focus every day in class and feel this is an unfair expectation for him until appropriate plans have been put into place by the IEP team."

On February 10, 2022, Ms. Quinn responded to the parent stating that Ms. Tummons had returned the break pass to the student during second period that day and that Ms. Tummons was planning to meet with the student to review the expectations for the use of the break pass.

The IEP team met on February 16, 2022 at the parent's request to review the student's IEP due to their ongoing concerns that the IEP was not being followed by the staff at Stucky Middle School. Participants in the meeting included the SLP, the school social worker, the school psychologist, the school nurse, the special education campus support staff, the principal, the assistant principal, the IEP manager and general education social studies teacher, the school counselor, as well as the student, the parents, and the student's biological mother. The Co-Executive Director of Families Together participated in the meeting virtually.

As a result of the February 16, 2022 meeting, USD #259 proposed to conduct a functional behavioral assessment as part of a reevaluation of the student. The parents were provided with a PWN for a Reevaluation and Request for Consent dated February 16, 2022which they signed on February 23, 2022.

The team also discussed the IEP accommodations at the meeting and the school staff reported on how each was implemented at school. In addition, the parents specifically asked when the student was scheduled to receive the 15 minutes per week of counseling. Ms. Tummons responded that the student was coming to see her at a regularly scheduled time on Fridays at the beginning of the school year; however, that had stopped because the student was using his break pass multiple times per day to go to the counselor's office during the week. Ms. Tummons reported that she stopped the scheduled time on Fridays because she was seeing him for more than 15 minutes per week and she didn't want to pull him out of class any more than necessary. The parents shared their belief that the counseling services were different than using the break passes and Ms. Tummons then offered to start the scheduled counseling again.

As a result of the February 16, 2022 meeting, USD #259 proposed adding five minutes of counseling for a total of 20 minutes per week and adding transportation as a related service. An IEP amendment dated February 16, 2022 documenting these updates was provided to the parents; however, they did not provide written consent until March 21, 2022.

On March 3, 2022, USD #259 provided the parents with a PWN for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent proposing to add an amendment to the May 13, 2021 IEP in order to increase the counseling services, to add transportation as a related service, and to add a sensory pass and a bathroom pass to the classroom accommodations. It is noted that the IEP amendment proposed by the district on February 16, 2022 did not mention the change in break passes. The parent provided written consent for these changes on March 23, 2022.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300. 300.320(a)(4) require school districts to develop an individualized education program (IEP) for each student with a disability that includes a statement of the program modifications that will be provided to enable the student to advance appropriately toward attaining the annual goals, be involved in and make progress in the general education curriculum, and to be educated and participate with other students with disabilities as well as their nondisabled peers.

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the IEP in effect during the 2021-22 school year included an accommodation for use of a break pass and for maintaining an assignment notebook / agenda. In addition, this IEP required 15 minutes per week of counseling as a related service. Interviews and documentation found that USD #259 did not consistently provide the accommodations for the use of a break pass and for maintaining an assignment notebook / agenda nor did USD#259 consistently provide the 15 minutes per week of counseling services to the student.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the student's Individualized Education Plan (IEP), specifically by not consistently providing two of the required classroom accommodations and the 15 minutes per week of counseling services, during the 2021-22 school year.

> ISSUE TWO: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a copy of the Individualized Education Plan (IEP) to all school staff responsible for its implementation during the 2021-22 school year.

Positions of the Parties

When school staff were asked why certain accommodations were not being provided to the student in the general education classroom, the parents reported several of the staff at Stucky Middle School told them that they were unaware of the accommodations in the student's IEP. The parents believe that USD #259 failed to inform all of the staff working with the student about their responsibilities for implementing the IEP during the 2021-22 school year.

USD #259 reported that multiple procedures are in place to ensure that IEPs are accessible to all staff working with a student's IEP through the district's electronic student information system, Synergy, in TeacherVUE. The USD #259 Instructional Technology Department provides annual Synergy training to teachers which includes demonstrating how to access a student's IEP.

In addition, the district uses a Secondary Beginning of the Year (BOY) Checklist for IEP Managers to ensure all teachers are aware of the IEP of any student assigned to their class. Amy Godsey, Mediation and Due Process Supervisor stated,

> USD #259 acknowledges that it [the BOY Checklist] does not contain explicit instructions directing the IEP Managers to inform all teachers of a child with an IEP on their caseload to access the student's IEP via TeacherVUE. Updating the elementary and secondary documents [the BOY Checklists] to remedy this omission is in progress. Additionally, a statement regarding IEP Managers' responsibility to inform all teachers of a child with an IEP on their caseload to access the full IEP in Synergy and to ensure that other staff responsible for implementing the IEP (para educators, etc.) receive a copy of the IEP if they do not have access to TeacherVUE will be included in the April Student Support Services newsletter that is distributed to all USD #259 employees.

Mr. Butler reported that he followed all district procedures for notifying all staff responsible for implementing the student's IEP of their responsibilities.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #259.

The findings of Issues One are incorporated herein by reference.

The district provided a copy of the student's May 13, 2021 IEP-at-a-Glance, showing that is was printed on August 12, 2022, the first day of the 2021-22 school year.

Ms. Tummons sent an email dated September 21, 2021 at 2:43 p.m. to Ms. Quinn requesting directions for how to print the student's IEP-at-a-glance because two of the student's paras had come to her to request a copy.

Ms. Quinn sent an email to Ms. Tummons on September 21, 2021 at 2:48 p.m. which stated,

> Here ya go – I was actually going to email you & tell that the student and I went thru [sic] his IEP during speech. He said he "kind of" knew what it was but I wanted him to know what his goals were & what accommodations he has, etc. I told him you were working on compiling a list of late/missing assignments, but emphasized that he has extended time. I encouraged him to self-advocate & talk w/ each of his teachers if he was needing extended time to determine how long he has. He said he wouldn't feel comfortable doing that necessarily so I told him we'd start w/ seeing what work he was behind on. I'm not surprised to hear the paras have no idea about the IEP-at-a-Glance. Even though that was on the checklist for IEP managers to complete at the beginning of the year . . . who knows if it got done?

When asked about providing the student's teachers, related service providers, and other staff working with the student with information about their responsibilities for implementing the IEP, Ms. Quinn further stated,

> Per the Beginning of the Year Checklist for Secondary, it is the responsibility of the IEP manager to provide staff members (general education teachers, specials teachers, para educators, administrators) a copy of the IEP-at-a-glance. An IEP-at-a-glance was generated in Synergy on 8/12/21. Since the student is on my speech/language caseload, I emailed all teachers who were on his schedule at the beginning of the school year to notify them of how I support the student. I received an email from Belinda Tummons on Tuesday, September 21, 2021 at 2:43 p.m. inquiring how to print the IEP-at-a-glance as two of the student's paras were in need, but usually the IEP managers send it out.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.323(d) require school districts ensure the each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of the IEP is informed of his or her specific responsibilities related to implementing the student's IEP and the specific

accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, the evidence supports a finding that USD #259, in violation of 34 C.F.R. 300.323(d)), did not provide at least two of the para educators working with the student with a copy of the student's IEP and did not inform them of their responsibilities for implementing the student's IEP until September 21, 2021

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to provide a copy of the Individualized Education Plan (IEP) to all school staff responsible for its implementation during the 2021-22 school year.

ISSUE THREE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically by not providing the required periodic reports of student progress towards IEP goals, during the 2021-22 school year.

Positions of the Parties

The parent reported they have not received the quarterly IEP Goal Progress Reports during the 2021-22 school year in a timely manner. They indicated that they made USD #259 staff aware of this oversight and requested copies of these reports at the February 16, 2022 IEP team meeting . School staff informed the parents that these reports were available in ParentVUE; however, the parents reported they were having difficulty accessing the district's student information system and were unable to view these documents. The parents acknowledged that Ms. Quinn printed the IEP Goal Progress Reports for Quarter 1 and Quarter 2 and provided them with copies at the February 16, 2022 meeting.

USD #259 reported that the IEP Goal Progress Reports are available on ParentVUE in Synergy, the electronic system for parents to access and view school documents. USD #259 noted that procedures are in place to ensure that all parents are aware of and have access to ParentVUE. School staff stated that all parents receive a copy of the

ParentVUE guidance document as part of annual enrollment process which reminds parents of the school documents available to be viewed. In addition, a Facebook post is made at the beginning of each school year to remind parents to login to ParentVUE,

Ms. Godsey acknowledged that the October 2021 Student Support Services Newsletter incorrectly told staff that IEP Goal Progress Reports did not need to be printed and sent home to parents since parents could access them via ParentVUE. Ms. Godsey noted,

> This inaccurate directive is in the process of being remedied . . . a correction for the April newsletter informs staff that parents are to receive a copy of the special education progress report each quarterly reporting period per their preferred method of contact. The Student Support Services newsletter is sent to all district employees.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #259.

The findings of Issues One and Two are incorporated herein by reference.

The May 13, 2021 IEP requires that "a report of progress toward meeting annual goals will be provided to the parents in the manner and frequency as general education report cards."

Both the school staff and parents agreed that grade cards and the IEP Goal Progress Reports were to be provided on a quarterly basis.

USD #259 acknowledged that copies of the student's IEP Goal Progress Reports were only made available to the parent during the first and second quarters of the 2021-22 school year through ParentVUE. Both the parents and the district acknowledge a printed copy of these IEP Goal Progress Reports was provided at the February16, 2022 IEP team meeting.

Mr. Butler stated,

> For the March 11 progress report, an electronic copy of the 3rd quarter progress report was sent to the student's three parents on record to their

emails on March 11. I did not notify the student's parents that is was available in ParentVUE or Synergy in the past.

The district was unable to provide documentation that the parents of the student had consented to receive electronic copies of special education documentation as their preferred method of contact during the 2021-22 school year.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300. 300.320(a)(3) require school districts to develop an IEP for each student with a disability that includes a statement of how the student's progress towards toward meeting the annual goals will be measured as well as a statement of when those periodic reports must be provided to the parent.

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP

In this case, the May 13, 2021 IEP in effect during the 2021-22 school year requires that the IEP Goal Progress Reports will be provided to the parents on a quarterly basis via the parent's preferred method of receiving notifications. Interviews and documentation found that, while the parents did have access to the IEP Goal Progress Reports through the ParentVUE system, the parents did not consent to receive notifications via an electronic method during the 2021-22 school year.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to develop an IEP with a statement of when the periodic reports of student progress will be provided to the parent. Instead, a violation of special education statutes and regulations is substantiated for failing to implement the student's IEP by actually providing the parents of the student with the required periodic reports of student progress towards IEP goals during the 2021-22 school year.

ISSUE FOUR: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an Individualized Education Plan (IEP), specifically measurable goals to meet the student's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.

Positions of the Parties

The parents reported being confused about how the student's progress towards meeting his annual IEP goals was being measured and why the IEP did not include any goals to address the significant regression in social and emotional behavior during the 2021-22 school year. At the February 16, 2022 IEP team meeting, the parents questioned school staff about the measurement of the goals and were told the IEP Manager, in consultation with the student's general education teachers, determined the student's progress towards meeting his annual goals each quarter. However, the school staff were unable to provide any data sheets to support how each annual goal was rated at the meeting.

USD #259 stated that, according to the KSDE Special Education Process Handbook, there are four critical components of a well-written IEP goal: 1) Timeframe – when the goal will be accomplished; 2) Conditions – how the goal will be measured; 3) Behavior – the skill being targeted in the goal; and 4) Criterion – how much, how often, or to what standard the behavior must occur in order to demonstrate the goal has been reached.

Ms. Godsey stated,

> It is the position of USD #259 that the student's current IEP contains five goals that meet the components of a well-written goal. The goals are indeed measureable and were written from need identified throughout the IEP with parent input. Further, parents signed consent for implementation of the IEP on May 13, 2021, and again on March 23, 2022, for the amendment to the IEP.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #259.

The findings of Issues One, Two, and Three are incorporated herein by reference.

The May 13, 2021 IEP describes how his disability impacts him in the general education setting as follows:

> The student is in special education due to his exceptionality of Autism. This affects his skills in the areas of socialization, communication, and processing information at the same rate as peers. The student diagnoses of ADHD-combined type [Attention Deficit Hyperactivity Disorder], OCD [Oppositional Defiant Disorder], and Autism which affect him in the academic setting. The student has delays in his emotional response, adaptation to change, and fear or nervousness. Due to the student's OCD, he experiences intrusive thoughts which may affect his behavior and emotional state.

The May 13, 2021 IEP includes one speech goal, one social goal, one study skills goal, and two behavioral goals. The speech goal is to be measured by "data/observation'. The social goal is to be measured by "observation charts". The study skills goal is to be measured by "teacher/para observation". The first behavior goal is to be measured by "observations and performance assessment" and the second behavior goal is to be measured by "anecdotal records."

USD #259 provided copies of the IEP Goal Progress Reports for the first, second, and third quarters of the 2021-22 school year showing the student is making progress toward his five annual IEP goals.

During the February 16, 2022 meeting with the IEP team, the parents specifically asked to see how the social goal was being measured. The goal states,

> By the next annual IEP, given a situation where the student has an opportunity to initiate with peers in a small group setting (lunch/recess, small group work time), the student will initiate with peers by gaining their attention by using appropriate personal space, and asking a question or making a comment about a relevant topic 4/5 opportunities, as measured by observation charts.

Staff responded by stating, "So if you are asking if there is any observational chart, it has not been charted. It has not been measured." The mother responded, "Ok, so no one is actually making observations? " Staff then stated, "There are several people making observations in the hallway and things like that . . ." and the parent clarified, "So when is it being charted and how is it being measured from last year to this year?" Staff then shared information about the IEP goal progress reports and how to access that document in ParentVue.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.320(a)(2) require school districts to develop an IEP for each student with a disability that includes a statement of measureable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and to meet each of the student's other educational needs that result from the student's disability.

Federal regulations at 34 C.F.R. 300. 300.320(a)(3) require school districts to develop an IEP for each student with a disability that includes a statement of how the student's progress towards meeting the annual goals will be measured as well as a statement of when those periodic reports must be provided to the parent.

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the May 13, 2021 IEP appears to include goals consistent with the concerns noted in the student's present level of academic achievement and functional performance related to the student's deficits in pragmatic language, social skills, study skills, and behavioral skills resulting from his disability. The five IEP goals are measureable; however, USD #259 acknowledged that no observation chart data was

kept on the social skills goal with which to determine if the student was actually making progress towards achieving that goal.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to develop measureable annual IEP goals based on the student's needs; however, a violation is substantiated for failing to implement the IEP by measuring the student's progress toward his annual IEP goals as required by the IEP.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, interviews and documentation showed USD #259 failed to consistently provide the accommodations of maintaining an assignment notebook/agenda and using a break pass during the 2021-22 school year. The district also failed to consistently provide the required 15 minutes per week of counseling to the student. USD #259 acknowledged the parents were not provided with the IEP Goal Progress Reports on a quarterly basis in their preferred communication method during the 2021-22 school year. In addition, interviews and documentation found USD #259 did not collect measureable data as required by the student's IEP goal for social skills in order to determine his periodic progress towards his annual IEP goals.

B. Federal regulations at 34 C.F.R. 300.323(d) require school districts ensure the each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of the IEP is informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

In this case, the evidence supports a finding that USD #259, in violation of 34 C.F.R. 300.323(d)), did not provide at least two of the para educators working with the student with a copy of the student's IEP and did not inform them of their responsibilities for implementing the student's IEP until September 21, 2021

Based on the foregoing, USD #259 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #259 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

   a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP and comply with state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) which require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

   b. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA)at 34 C.F.R. 300.323(d) require school districts ensure the each regular education teacher, special education teacher, related services provider, and any other service provider who is

responsible for the implementation of the IEP is informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

2. It is noted that USD #259 is in the process of updating its procedures through the revising the technical assistance guidance documents related to IEP goal progress reports as well as the responsibility of each IEP manager to ensure each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of the IEP is informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. No later than July 1, 2022, USD #259 will provide SETS with a copy of these updated documents.

3. No later than May 15, 2022, USD #259 will arrange for TASN to conduct a training for all licensed and certificated special education staff, including IEP managers, school psychologists, and building administrators working at Stucky Middle School in USD #259 regarding the IDEA requirements related to implementing the IEP as written and how to collect data on the annual IEP goals. No later than August 30, 2022, USD #259 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #259 will provide SETS with any handouts and/or a copy of the presentation.

4. No later than ten days from the date the parents make a new request to transfer the student to another middle school within the boundaries of USD #259, USD #259 shall meet with the parents and present at least two options for a transfer to a middle school where the special education staff have appropriate certification and additional training in working with students with Autism. In presenting these two options, USD #259 shall take into consideration the distance of the options from the student's home, with a preference toward minimizing the distance. In addition, USD #259 shall offer to transport the student to the selected option and to the student's home each school day. The

parent may then choose to transfer the student to the school building of their choice or keep the student enrolled at Stucky Middle School. USD #259 shall provide SETS with meeting notes documenting the discussion and parents' decision no later than 10 days from the date of the parent meeting.

5. Further, USD #259 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #378

ON MARCH 29, 2022

DATE OF REPORT APRIL 28, 2022

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

The complaint is against USD #378 (Riley County Public Schools) who contracts with the Twin Lake Education Cooperative (TLEC) to provide special education and related services to students enrolled in USD #378. In the remainder of the report, "USD #378," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on March 29, 2022 and the 30-day timeline ends on April 28, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, initially interviewed the mother by telephone on April 1, 2022 and then again on April 13, 2022. Additionally, the Complaint

Investigator interviewed a family friend and advocate, Rachel Crawford, on April 12, 2022 and the father on April 19, 2022.

USD #378 made the following school staff available for an interview on April 13, 2022:

- Anita Breen, Director of Special Education, TLEC
- Nancy Johnston, 5th grade teacher, Riley County Grade School
- Jennifer Begnoche, School Psychologist, TLEC
- Jacob Larson, Principal, Riley County Grade School
- Kylie Miller, 5th grade teacher, Riley County Grade School
- Danica Nelson, , 5th grade teacher, Riley County Grade School
- Katy Hanson, Special Education Teacher - TLEC, Riley County Grade School

The Complaint Investigator also exchanged emails with the district staff between April 1, 2022 and April 22, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Documentation of District Policies, Practices and Procedures: Child Find, Screening, General Education Intervention, Referral, Evaluation & Eligibility Procedures, undated
- Star Annual Progress Report, Star Math Enterprise Assessment, Star Reading Enterprise Assessment for the dates September 2, 2021 and December 1, 2021
- Email dated October 6, 2021 at 9:14 a.m. written by the mother to Jared Larson, Principal, Riley County Grade School
- Email dated October 7, 2021 at 9:58 a.m. written by Mr. Larson to the mother
- Email dated October 7, 2021 at 1:53 p.m. from the mother to Mr. Larson
- Email dated October 7, 2021 at 2:04 p.m. from Mr. Larson to the mother
- Email dated October 20, 2021 at 9:43 a.m. from the mother to Mr. Larson
- Email dated October 20, 2021 at 10:53 a.m. from Mr. Larson the mother
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated October 28, 2021, signed by parents on November 2, 2021

- Email dated December 2, 2021 at 11:49 a.m. from the mother to Anita Breen, Director of Special Education TLEC
- Email dated December 2, 2021 at 12:24 p.m. from Ms. Breen to the mother and Jennifer Begnoche, School Psychologist, USD #378
- Email dated December 2, 2021 at 1:24 p.m. from Ms. Begnoche to Ms. Breen
- Wechsler Individual Achievement Test, Fourth Edition (WIAT-4) testing results with administration date of December 2, 2021
- Wechsler Intellectual Scale for Children 5th Edition (WISC-V) testing results and summary recommendations with administration date of December 2, 2021
- Email dated December 9, 2021 at 8:02 a.m. from the mother to Ms. Begnoche
- Email dated December 9, 2021 at 9:02 a.m. from Ms. Begnoche to the mother
- Email dated December 10, 2021 at 10:50 a.m. from the mother to staff at USD #378
- Behavior Assessment System for Children, 3rd edition (BASC3) testing results from administration dates of January 5 and January 10, 2022
- Email dated January 10, 2022 at 1:04 p.m. from Ms. Begnoche to the mother
- Notice of Meeting (NOM) to review the Evaluation and Determine Eligibility dated January 11, 2022
- Email dated January 11, 2022 at 8:53 a.m. from the mother to staff at USD #378
- Email dated January 11, 2022 at 9:23 a.m. from Ms. Begnoche to the mother
- Email dated January 21, 2022 at 1:08 p.m. from Ms. Begnoche to the mother
- Email dated January 21, 2022 at 8:09 a.m. from the mother to staff at USD #378
- Email dated January 21, 2022 at 8:15 a.m. from Ms. Begnoche to the mother
- Email dated January 24, 2022 at 8:35 a.m. from the mother to staff at USD #378
- Email dated January 24, 2022 at 9:36 a.m. from Ms. Begnoche to the mother
- ADHD Diagnosis Report from Riley Family Physicians dated January 24, 2022
- Twin Lakes Educational Cooperative Eligibility and Multidisciplinary Team Report dated January 26, 2022
- PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated January 26, 2022
- Email dated February 9, 2022 at 12:09 p.m. from the mother to Ms. Begnoche and Ben Gordon, Assistant Principal, Riley County Grade and Middle School
- Email dated February 9, 2022 at 3:13 p.m. from Ms. Begnoche to the mother

- Email dated February 9, 2022 at 4:13 p.m. from the mother to Ms. Begnoche
- Email dated February 9, 2022 at 4:25 p.m. from Ms. Begnoche to the mother
- Email dated February 9, 2022 at 8:53 p.m. from the mother to Ms. Begnoche
- Email dated February 10, 2022 at 5:36 a. from Ms. Breen to Ms. Begnoche
- Email dated February 10, 2022 at 8:14 a.m. from Ms. Begnoche to Ms. Breen
- Email dated February 10, 2022 at 9:44 a.m. from the mother to Ms. Breen
- Email dated February 17, 2022 at 1:51 p.m. from Ms. Begnoche to the mother
- Email dated February 17, 2022 at 3:21 p.m. from the mother to Ms. Begnoche
- Email dated February 17, 2022 at 3:39 p.m. from Ms. Begnoche to the mother
- Email dated February 17, 2022 at 6:59 p.m. from the mother to Ms. Begnoche
- Email dated February 18, 2022 at 2:15 p.m. from Ms. Begnoche to the mother
- Email dated February 24, 2022 at 9:08 a.m. from the mother to Ms. Begnoche
- Email dated February 24, 2022 at 10:10 from Ms. Begnoche to the mother
- PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated February 28, 2022
- Email dated March 28, 2022 at 12:04 p.m. from the mother to Ms. Breen
- Email dated March 28, 2022 at 1:52 p.m. from Ms. Breen to the mother
- Email dated March 28, 2022 at 2:40 p.m. from Ms. Begnoche to Mr. Gordon
- Email dated March 28, 2022 at 2:45 p.m. from Mr. Gordon to Ms. Begnoche
- Email dated March 28, 2022 at 2:45 p.m. from Ms. Begnoche to Mr. Gordon
- Email dated March 28, 2022 at 2:49 p.m. from Ms. Begnoche to Mr. Gordon
- Email dated March 28, 2022 at 2:51 p.m. from Ms. Gordon to Ms. Begnoche
- Email dated March 28, 2022 at 3:18 p.m. from Ms. Begnoche to Mr. Gordon
- Email dated March 29, 2022 at 8:03 a.m. from the mother to Ms. Breen
- PWN for Evaluation or Reevaluation and Request for Consent dated April 1, 2022
- Email dated April 13, 2022 at 3:58 p.m. from Nancy Johnston, 5th grade teacher, Riley County Grade School to Donna Wickham, Complaint Investigator

Background Information

This investigation involves an 11-year-old male student who is currently enrolled as a 5th grader at Riley County Grade School. He lives with his family. The student initially received speech therapy services in Wyoming prior to entering kindergarten. He was

dismissed from these services when he met his IEP goals and he has not received any special education or related services since that time.

The student moved to Kansas in the fall of 2020 and enrolled at Riley County Grade School in USD #378 as a fourth grader. During fourth grade, the student struggled in mathematics, focus and attention. In fifth grade the student continued to struggle with focus and attention; however, his parents thought it could be attributed to the COVID pandemic learning loss or a long-term substitute having different grading and classroom expectations as he seemed to do better after his fifth-grade teacher returned from parental leave during the first semester of the 2021-2022 school year.

His parents reported they spent time every evening helping him with homework, studying or reviewing classroom work to enable the student to achieve average grades. They report his attitude toward school was deteriorating. The parents made a referral for an evaluation in October to learn if he could qualify for special education services, so he did not fall further behind in school and experience frustration. The student was diagnosed with attention deficit hyperactivity disorder (ADHD) in January, 2022 by his medical doctor.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parents raised two issues that were investigated. One additional issue was not addressed because it did not fall under the jurisdiction of the IDEA and the family was provided with information and resources for addressing that allegation to the appropriate authority.

> ISSUE ONE: The USD #378, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to a parent request for a special education evaluation and to conduct a timely evaluation of the student during the 2021-2022 school year.

Positions of the Parties

The parents reported they shared their concerns about the student's attention, focus and academics with the staff at Riley County Elementary School and shortly thereafter requested a formal comprehensive evaluation to determine if their son was a student with a disability and eligible for special education and related services. The parents cite their son's falling grades, frustration with schoolwork, attention issues and the amount of homework assistance needed at home to earn passing grades as the reason for a referral.

They allege that USD #378 failed to respond to their request for an evaluation in a timely manner and failed to conduct a comprehensive evaluation of the student in a timely manner. The parents also reported USD #378 failed to provide them with a complete copy of the evaluation report in a timely manner. The parents requested to receive a copy of the evaluation report prior to or at the eligibility determination meeting held on January 26, 2022. The parents indicated the district only provided them with incomplete computer-generated reports from the Behavior Assessment System for Children, 3rd edition (BASC3), the Wechsler Individual Achievement Test, 4th edition (WIAT-4), and the Wechsler Intelligence Scale for Children, 5th edition (WISC-V) on January 21, 2022.

USD #378 reported that it has followed the appropriate evaluation procedures during the 2021-2022 school year. The LEA reported that the student was successful in fourth grade and the district first learned of the parent's concerns through an email sent by the mother in October when the student was in fifth grade. School staff indicated the student's grades were average and the concerns were related to motivation and attention; however, the district honored the parent's request for a special education evaluation by conducting a comprehensive evaluation within the 60 school-day timeframe to determine if he was eligible for special education and related services.

USD #378 reported the parents were provided with a copy of the Eligibility and Multidisciplinary Team Report which included a summary of assessment results at the January 26, 2022 eligibility determination meeting. The district acknowledged that not all pages of the computer-generated WISC–V report were initially provided to the parents prior to the eligibility determination meeting but that a complete copy was provided to the parents on February 14, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents, family friend/advocate and LEA staff in USD #378.

The parent sent an email to the principal at the student's school on October 6, 2021 making a formal request for an evaluation. The parents stated,

> The student has been really struggling this year academically. He seems to be struggling with his attention and completing work. If we didn't spend hours on homework many nights, he would be failing most of his core subjects. He has spoken about dropping out of school a couple of times this year already. I contacted my doctor's office and they suggested that I reach out to you about having the student tested for attention issues. I am requesting that the school psychologist evaluate to see if he truly is struggling because of his attention.

On October 7, 2021, the principal responded that school staff were more than willing to complete any attention rating scales provided by the student's doctor. The mother responded to the principal in an email on that same date that she was making a formal request for a full evaluation of the student for special education and related services by the multidisciplinary team. On October 20, 2021 the mother emailed the principal asking for an update on the status of the evaluation request.

On October 28, 2021 a PWN for Evaluation or Reevaluation and Request for Consent was sent to the family proposing to conduct an initial evaluation in the areas of social/emotional/behavioral skills, general intelligence, and academic performance. The parents signed consent for the proposed evaluation on November 2, 2021 and the district staff received the written consent on November 4, 2021.

On December 2, 2021 an email from the parent asked for an update on the status of the evaluation. She wrote, "What day was the consent to evaluate received in regards to the student? I know that I initially requested a full evaluation on October 7, but didn't receive the paperwork in the mail until November 1st. I mailed it back on November 2." The special education director responded to the parent via email on December 2, 2021 and explained the 60 school-day timeline to conduct the evaluation and determine eligibility.

On December 9, 2021 and again on January 21, 2022, the parent emailed the director of special education requesting to receive a copy of the evaluation results prior to the January 24, 2022 eligibility determination meeting.

The TLEC sent the parent a Notice of Meeting (NOM) on January 11, 2022 proposing a meeting date of January 26, 2022.

Computer-generated copies of the BASC3, WIAT-4 and WISC-V assessment results were sent home with the student on January 21, 2022; however, pages 10 through 20 of the WISC-V report were not provided. Pages 10 - 20 of the WISC-V assessment report included recommendations.

On January 24, 2022, the parent emailed the school psychologist requesting the missing pages from the WISC-V report. The parent requested copies of these missing pages at the January 26, 2022 eligibility determination meeting; however, these were not provided. On February 3, 2022 and on February 9, 2022, the parents again requested the missing pages via email to the school psychologist. According to a parent email, the missing pages were finally received by the parent on February 14, 2022.

The TLEC Eligibility and Multidisciplinary Team Report for an Initial Evaluation for a Specific Learning Disability is dated January 26, 2022.

USD #378 provided the parent with a PWN for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent on January 26, 2022 stating that the student was determined to not meet the eligibility criteria as a student with a learning disability. Both parents signed their agreement with the PWN on January 26, 2022.

The Documentation of District Policies, Practices and Procedures: Child Find, Screening, General Education Intervention, Referral, Evaluation & Eligibility Procedures for Sponsoring District USD #379 Clay County and Cooperating Districts USD #223 Barnes/Hanover/Linn, USD #334 Southern Cloud, USD #378 Riley County, USD # 384 Blue Valley Randolph/Olsburg states:

1. Parental Request for Evaluation Parents have the right to request an evaluation. In most cases, the school will choose to comply with that request. The building principal or his designee however, must meet with

the parent within 15 school days and explain that a building level, general education intervention process that precedes an initial evaluation is available to assist the team in determining the specific concerns and needs of their child.

2. Upon completion of the administration of assessment and other evaluation materials the determination of whether the child is an exceptional child is made by the team of qualified professionals and the parent of the child and a copy of the evaluation report and the documentation of determination of eligibility is given to the parent. The evaluation time follows 60 school day timeline requirements.

Applicable Regulations and Conclusions

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 and outlines timelines for the initial evaluation to occur.

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, unless there are unusual circumstances. The USD#378 policies and procedures manual aligns with this 15-school day timeline as well.

The mother's request for an initial evaluation for special education for her child was made on October 7, 2021 and USD #378 responded to this request with a PWN proposing to conduct an initial special education evaluation on October 28, 2021, which is 13 school days. The allegation that the district did not respond in a timely fashion to a parent-initiated evaluation request is not substantiated because USD #378 responded to the parents' request within the required 15-school days of the parent request.

Additionally, 34 C.F.R. 300.301(c)(1)(i) and K.A.R. 91-40- 17(a) states the initial evaluation must be conducted within 60 school days of receiving parental consent for the evaluation. The activities that must be completed during the 60 school days include: 1:

conduct an evaluation of the child; 2) conduct a meeting to determine if the child is an exceptional child and if so, develop an IEP, and finally; 3) give notice of this meeting.

Parent consent was provided on November 4, 2021 to evaluate the student for special education eligibility, starting the 60 school-day timeline. The parent was provided with a Notice of the Meeting on January 11, 2022 scheduling an eligibility determination meeting for January 26, 2022. The student was not found eligible for special education or related services at the January 26, 2022 eligibility determination meeting which is 46 school days from the date the district received the parent consent to conduct an evaluation. Based on the foregoing, a violation that the district did not complete an evaluation in a timely fashion is not substantiated because USD #378 completed the initial evaluation within the required 60-school days of the parent consent.

Federal regulations at 34 C.F.R. 300.306(a)(2) require that the public agency provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. The Office of Special Education Programs (OSEP) provided clarification regarding the timeline to provide the parent with a copy of the assessment results and the evaluation report in the September 9, 2019 OSEP Letter to Anonymous stating,

> However, neither IDEA nor its implementing regulations establish a timeline for providing a copy of the evaluation report or the documentation of determination of eligibility to parents. Likewise, IDEA does not prescribe a timeline for sharing the results of assessments conducted as part of the child's evaluation or reevaluation. Whether parents receive all evaluation reports prior to the IEP Team meeting is a decision that is left to State and local officials to make. (71 Fed. Reg. 46645)

Additionally, K.A.R. 91-40-10 and USD #378 district practices are consistent with Federal regulations at 34 C.F.R. 300.306(a)(2) and established no timeline requirement in regard to providing the eligibility report in Kansas.

In this case, USD #378 provided the parent with a copy of TLEC Eligibility and Multidisciplinary Team Report on January 26, 2022 which describes the assessment results, the consideration of eligibility criteria, and the determination of eligibility. Based on the foregoing, the allegation that a copy of the evaluation report was not provided prior to the meeting is not substantiated.

ISSUE TWO: The USD #378, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a comprehensive evaluation in all areas of suspected disability during the special education evaluations conducted during the 2021-22 school year.

Positions of the Parties

The parents alleged that the student's initial evaluation for special education and related services was incomplete and that they were not involved in reviewing the existing data to determine what areas of evaluation would occur. They state the school staff unilaterally determined the areas needed to be evaluated and then did not evaluate all areas identified in the PWN as areas of concern. They alleged the evaluation did not include any classroom observations, time on task or other assessments to determine the impact of the student's attention or focus despite concerns from parents and teachers.

They further alleged there was a predetermination of the specific learning disability (SLD) eligibility category, despite the parents' concern for attention and focus. They stated that the eligibility decision for SLD was made using only the WIAT-4 and good grades as the data sources. They stated the predetermination of eligibility was confirmed when a PWN was handed to the parents at the conclusion of the meeting stating he was not eligible for special education as a student with specific learning disabilities**.** During this eligibility determination meeting the parents shared with the team that the student was recently diagnosed with ADHD. They contended this new diagnosis was not considered in determining disability during this meeting because only one disability eligibility category could be considered at a time.

The parents then requested a new eligibility meeting to consider OHI as an eligibility category with the ADHD diagnosis, but were told he did not meet eligibility because he did not need special education services or related services to participate in general education.

Finally, the parents contended that the district failed to provide their advocate effective access to the eligibility determination meeting in spite of making a request to include her virtually.

USD #378 responded that while they did not initially suspect that the student was a student with special education needs or related services, they honored the parents request and scheduled and completed an evaluation to determine if he met eligibility for special education services. They reported the student was not receiving any additional assistance in his classroom beyond classroom accommodations available to all students in his class as the teacher saw a need. The district stated that while hearing and vision screening were marked on the PWN for evaluation it was noted in the justification as using screening to determine if further evaluation was indicated. The district stated they did not consider the medical diagnosis as part of the comprehensive evaluation as it was not available at the time of the report and meeting. They stated they later considered it and while he does have a diagnosis of ADHD his previous evaluation did not support a need for special education or related services.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #378.

The findings of Issue One are incorporated herein by reference.

The parent emailed a formal request for a special education evaluation based on concerns about attention and focus and its effect on academics to the school principal on October 7, 2021.

A PWN for consent to evaluate was sent to the parents by the USD #378 school psychologist indicating a need to collect new data for vision (school screening to assess for concerns), hearing (school screening to assess for concerns), social/emotional status, behavioral status (BASC3 to assess behavior concerns parent has), general intelligence (assess for cognitive delays that may impact learning), and academic performance (to assess academic delays that impact learning). Use of existing data were not indicated for any area of evaluation.

On January 24, 2022 the parent reported that the student went to a medical doctor where he was provided a prescription of Adderall for ADHD. It is handwritten on the January 24, 2022 Eligibility and Multidisciplinary Team Report that “the student has

recently received an ADHD diagnosis". Another handwritten note recorded parent input as "concerns with attention and focus on tasks, concerns with working memory."

On January 26, 2022 the parent and district reported that the parent provided a copy of the prescription to administer the medication at school and reported that the student had been diagnosed with ADHD, but not a doctor's report of the diagnosis.

The January 24, 2022 Twin Lakes Educational Cooperative Eligibility and Multidisciplinary Team Report showed the student was given the WISC-V to evaluate his cognitive abilities. The student was given the BASC3 to evaluate his social/emotional abilities. The WIAT-4 was given to evaluate his academic skills. No concerns were indicated in Health/Motor, Vision, Hearing and Communication and no evaluation was provided to substantiate those conclusions. The summary and conclusion section stated:

> The student was evaluated to assess his need for special education services as a student with a learning disability. His cognitive skills are in the average range which indicates that he does not demonstrate cognitive delays which may impact his ability to learn. His achievement skills were assessed, and his skills are in the average to high average range. He appeared to put forth his best effort during the assessment. There were times that he started to provide answers before he was given all the instructions. Parents and teachers were also given the BASC3 to complete. The parent report indicated more behavioral symptoms in the home setting than are seen in the classroom setting. The homeroom teacher reports that at times he doesn't appear to want to complete the work unless it is preventing him from doing something he wants to do. She does have concerns regarding his view of education and its value. He maintained all passing grades first semester.

On the Eligibility and Multidisciplinary Team Report of January 26, 2022, Specific Learning Disability was checked as the exceptionality considered following the summary and conclusion section of the evaluation. The report indicated the student did not meet criteria for an exceptionality, specifically noting he did not meet criteria as a student with a learning disability. It was reported that his cognitive and achievement scores indicated that he had adequate skills to enable him to participate and complete grade level work.

The PWN dated January 26, 2022 resulting from the January 26, 2022 eligibility determination meeting indicated the student "was evaluated and does not meet criteria as a student with a learning disability and does not demonstrate a need for special education services." Comprehensive evaluation, classroom data, and BASC3 reports were described as the data used as a basis for the proposed action. Both parents gave consent that they were provided a copy of procedural safeguards and consented to the special education action.

On February 9, 2022 in an email the parents formally requested a meeting to discuss the student's recent ADHD evaluation and consider eligibility for special education and related services under the category of OHI in light of the new medical diagnosis. The director of special education agreed to the meeting in an email on February 9, 2022 to meet about the testing data. She further wrote,

> The test for special education, whether checking for a specific learning disability or OHI would be the same. To qualify for special education, the student must meet two prongs of eligibility. The first prong is whether the student has a disability. The second prong is whether the student needs specially designed instruction to have access to the general education curriculum. After looking at the scores and grades today, he doesn't meet the second prong. We could look at this again for OHI. One difference would be that he would be considered a student with a disability, but still would not meet the modifications in the classroom and curriculum, which could possibly qualify him for a 504 plan.

On February 17, 2022 the school psychologist emailed the parent to schedule a time to discuss the student's needs for February 24 at 3:30. When an agreeable date and time was determined the parent requested in an email a zoom link so an advocate could participate. The school psychologist emailed that she will not set up a zoom link for the meeting and stated any person unable to attend could be called or facetimed, if desired.

The February 24, 2022 meeting was recorded on a PWN, dated February 28, 2022. It stated, "we met to review the evaluation/assessment data of your child, including any evaluations or information you provided, current classroom-based assessments and observations, and teacher or other staff observations to determine whether your child

was eligible for special education." The action of the meeting was that he did not qualify for eligibility under the exceptionality of OHI. The explanation was that while the student does have an exceptionality due to his diagnosis of ADHD, the testing data showed he is making adequate progress and not in need of special education and related services.

Both parents and district acknowledged that the advocate's participation was via a Facetime call using the parent's phone. Both parents and district acknowledged that the advocate's participation was marred by the quality of sound.

On March 28, 2022 an email was sent to the director of special education by the parents requesting an independent educational evaluation (IEE) stating that not all evaluation areas indicated on the October 28, 2021 PWN were conducted, additional areas of evaluation were indicated in the WISC-V summary recommendations and attention and focus issues were not addressed through evaluation.

On March 28, 2022 the district agreed to provide an IEE at no cost to the family.

On April 1, 2022 a PWN for Evaluation or Reevaluation and Request for Consent was provided to the family for the IEE. It was signed and returned on April 22, 2022.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.304(c)(4) require school districts to assess any child suspected of being a child with a disability in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.

As part of an initial evaluation, federal regulation implementing the IDEA at 34 C.F.R. 300.305 (a)(1) require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers.

On the basis of that review and input from the child's parents, federal regulations implementing the IDEA at 34 C.F.R. 300.305(a)(2) require school districts to identify what

additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service.

Kansas regulations at (K.A.R. 91-40-8(c), (d) and K.A.R. 91-40-27(e) are more specific in directing a district to review "existing data that is currently available including evaluations and information provided by the parents, current classroom-based, local, or state assessments, and classroom-based observations, and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented". This review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents.

In this case, the evidence supports a finding that USD #378 is in violation of 34 C.F.R. 300.305(a)(1), 300.305(a)(2), (K.A.R. 91-40-8(c), (d); and K.A.R. 91-40-27(e) as it did not include the parents in the review of existing evaluation data, nor did it consider evaluations and information provided by the parents. USD #378 also failed to include classroom-based observations, and observations by teachers as a part of the initial evaluation when considering the eligibility category of specific learning disabilities.

Interviews and documentation found the parents had concerns in the area of attention and focus and its effect on his academic performance. The PWN of October 28, 2021 did not recommend any evaluation to address those concerns.

Interviews and documentation further found USD #378 made a predetermination of evaluating for a specific learning disability during the January 26, 2022 eligibility determination meeting in both the Eligibility and Multidisciplinary Team Report and PWN dated from that meeting. In spite of the parent bringing a medical diagnosis of ADHD to the meeting, the team continued with the predetermined eligibility category. As well, the January 26, 2022 PWN was filled out prior to the meeting with decisions about eligibility and presented to the family at the eligibility determination meeting for signatures.

The IDEA at 34 C.F.R. 300.302 states that screening of a student shall not be considered an evaluation for eligibility for special education and related services. Therefore, USD #378 committed a procedural error when it indicated that new data would be collected for hearing and vision, but then provided a justification that screening would occur to

assess for concerns that may impact learning and evaluation would occur if the screening warranted additional evaluation. This does not constitute evaluation for the purposes of considering eligibility.

The IDEA at 34 C.F.R. 300.321(a)(6) and K.A.R. 91-40-17(b)(4) provides that the parent has the right to invite to the IEP team meeting individuals whom the parent believes to have knowledge or special expertise about the child. The parent invited an advocate who is a credentialed special educator with knowledge of the student to the second eligibility determination meeting. She attended the meeting virtually as reported by parent, advocate and district report using inadequate virtual technology for participation. It is found that the district offered two options (FaceTime or call) for participation and could not have foreseen that the technology would be inadequate since they do not routinely rely on virtual participation meetings. It is noted that the district should explore and offer more adequate options for virtual participation in the future.

Finally, districts are required to provide notice of meetings according to IDEA at 34 C.F.R. 300.322(a)(1) and K.A.R.34 91-40-37(b), providing written notice at least 10 days in advance of the meeting. The parents allege that while they were contacted by USD#378 to schedule the meeting, no documentation was provided to demonstrate that a 10-day notice of meeting for the February 28, 2022 determination of eligibility meeting was provided to the parents or to waive the 10-day notice at the meeting. This allegation is therefore substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300.305(a)(1), 300.305(a)(2), and state regulations at (K.A.R. 91-40-8(c), (d); and K.A.R. 91-40-27(e) require school districts to obtain participation in and to obtain input from the parents during the review of existing data in order to determine what additional data, if any, is needed to determine whether the child is a child with a disability; the present

levels of academic achievement and related developmental needs of the child and whether the child needs special education and related services.

In this case, the evidence supports the finding that USD #378 did not obtain participation or input from the parents during the review of existing data in order to determine what additional data, if any, was needed to determine whether the child is a child with a disability. All documentation and discussion for determination of eligibility was directed to eligibility as a child with specific learning disabilities (SLD) instead of equally considering all fourteen disabilities categories.

B. The IDEA at 34 C.F.R. 300.302 states that screening of a student shall not be considered an evaluation for eligibility for special education and related services.

USD #378 committed a procedural error when it indicated that screening would be used to determine if additional evaluation data were needed for hearing and vision.

C. Federal regulations at 34 C.F.R. 300.322(a)(1) require that parents be provided written notice at least 10 days in advance of the meeting.

In this case no Prior Written Notice was produced for the February 28, 2022 eligibility determination meeting. It is noted that emails document that parents and district agreed upon a mutually agreeable time and date.

Based on the foregoing, USD #378 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #378 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

   A. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.305(a)(1) and 300.305(a)(2) and state regulations at (K.A.R. 91-40-8(c), (d); and K.A.R. 91-40-27(e) which require school districts to obtain participation in and obtain input from the parents during the review of existing data in order to determine what additional data, if any, is needed to determine whether the child is a child with a disability; the present levels of

academic achievement and related developmental needs of the child; whether the child needs special education and related service.

B. Comply with the federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.302 which requires that screening of a student shall not be considered an evaluation for eligibility for special education and related services.

C. Comply with the federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.322(a)(1) which requires that parents be provided written notice at least 10 days in advance of the meeting.

2. No later than the last day of the 2021-22 school year, USD #378 shall reconvene the student's multidisciplinary team to review existing data, including the ADHD diagnosis provided by the parents. In addition, the multidisciplinary team will consider all parent concerns related to attention and focus and determine if additional assessments are needed to determine eligibility. Finally, the multidisciplinary team will determine if additional assessment is needed in order to properly consider the eligibility category of specific learning disabilities, specifically classroom observations.

3. No later than May 31, 2022, the Twin Lakes Education Educational Cooperative shall review and revise, if appropriate, its procedures and practices related to conducting the Review of Existing Data as part of the initial evaluation process. No later than June 15, 2022, Twin Lakes Education Educational Cooperative will provide a copy of the written procedures to SETS for review and approval as well as a plan for distribution of the written procedures. Within 10 school days of approval, the written procedures will be distributed to all licensed and certificated special education staff, including school psychologists, and building administrators, and written documentation of that distribution shall be provided to SETS.

4. No later than May 31, 2022, USD #394 will arrange for TASN to conduct a training for all licensed and certificated special education staff, including school psychologists, and building administrators working in USD #394 regarding the IDEA requirements related to conducting a Review of Existing Data and planning for appropriate evaluation as part of the initial evaluation process as well as when and how to provide appropriate PWN and NOM for an initial evaluation and reevaluation. No later than 30 days after the start

of the school year, USD #378 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #378 will provide SETS with any handouts and/or a copy of the presentation.

5. Further, USD # 378 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Donna Wickham

Donna Wickham, Complaint Investigator

K.A.R. 91-40-5(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)

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #253
ON MARCH 28, 2022

DATE OF REPORT: APRIL 25, 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on April 6, 2022. On April 4, 2022, the investigator spoke via telephone with Tara Glades, Director of the Flint Hills Special Education Cooperative.

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

- IEP for the student dated March 2, 2021
- Notice of Meeting dated January 31, 2022
- Draft IEP for the student dated February 24, 2022
- Team Meeting Record dated February 4, 2022
- IEP for the student dated March 1, 2022
- Team Meeting Record dated March 1, 2022
- Team Meeting Record dated March 1, 2022 containing both district-developed and parent-developed notes
- Email dated March 2, 2022 from the school psychologist to the parent
- Email exchange dated March 2, 2022 between the parent and the school psychologist
- Email dated March 3, 2022 from the parent to the school psychologist
- Email dated March 4, 2022 from the school psychologist to the parent
- Email dated March 11, 2022 from the parent to the school psychologist
- Email dated March 21, 2022 from the parent to the school psychologist

- Email dated March 23, 2022 from the parent to the school psychologist
- Email dated March 28, 2022 from the school psychologist to the parent
- Email dated March 29, 2022 from the parent to the school psychologist
- Email dated April 1, 2022 from the school psychologist to the parent
- Online Academic Calendar for the district for the 2021-22 school year

Background Information

This investigation involves an 11-year-old boy who is enrolled in the 5th grade in his neighborhood school. The student was first determined to be eligible for special education services in February of 2021 under the category of Specific Learning Disabilities.

At the time of the investigation of this complaint, the parent has requested an independent educational evaluation (IEE) for the student. The parties are also pursuing mediation regarding issues outside of those presented in this complaint.

Issues

In her complaint, the parent identified three concerns. The distict provided the Kansas State Department of Education (KSDE) with a proposed resolution to the first issue, and that proposal was accepted.

This investigation will focus on the two remaining issues.

Issue Two: The district failed to provide the parent with prior written notice of its proposal to change the special education services being provided to the student.

Applicable Statutes and Regulations

The parent of an exceptional child shall have the right to written prior notice whenever a district proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child (K.S.A. 72-3430). If the district proposes to make a material change in services (25% or more of the frequency or duration of any one service), the parent must agree in writing to that change. Similarly, if the district proposes a substantial change in placement (more than 25% of the child's school day), that change cannot be made without the written consent of the parent (K.A.R. 91-40-27(a)(3)).

The Kansas State Department of Education has determined that in situations where a school district is required to provide parents with a written notice of the district's proposal or the district's refusal of a parent's proposal, a reasonable time in which to provide such notice to the parents is 15 school days, unless there is some unusual circumstance (Letter to Directors by Passman, January 8, 2002).

Parent's Position

The parent asserts that prior to the filing of this complaint, the district failed to provide her with prior written notice of a proposal to decrease and/or remove special education services to the student.

District's Position

The district states that it was coincidental that the parent was provided with prior written notice regarding changes to the student's IEP on the same day that the parent filed this complaint. According to the district, a draft IEP was sent to the parent on March 2, 2022. The district asserts that it actively sought input from the parent regarding changes reflected in the draft. The district contends that the draft IEP was – according to the parent – being reviewed by someone outside the district, and the parent was waiting for that review to be completed before providing the district with feedback. On March 28, 2022, having received no communication from the parent regarding changes to the IEP, the district states that it provided the parent with prior written notice regarding proposed changes to the document.

Investigative Findings

The student's initial IEP was completed on March 2, 2021. According to that IEP, the student was to start the 2021-22 school year with the following services:

- 20 minutes 5 times per week of direct instruction in writing structure and spelling in a resource room setting;
- 20 minutes 5 times per week of general education support for literacy;
- 20 minutes 5 times per week of general education support for writing;
- 20 minutes once a week of therapy with a speech/language pathologist;
- 20 minutes once a week of Occupational Therapy (OT); and
- collaboration time once every four weeks between the OT, speech/language pathologist, and special education teacher.

On February 24, 2022 an IEP Team meeting was held for the purpose of conducting an annual review of the student's IEP. All required participants attended the meeting including the parent who participated virtually.

At the meeting, the district proposed a draft IEP which reflected a change in special education services and placement for the student, dropping all direct instruction in writing and spelling as well as all support in the general education setting and reducing the student's resource room support to one check-in session a week for 15 minutes. Speech/ language and OT services would continue at the same level as they were in the March 2, 2021 IEP.

The parent disagreed with the district and requested that a second meeting be held so that the student could share his thoughts and feelings regarding a reduction in his special education services.

The follow-up meeting was held on March 1, 2022. The student attended the meeting in person; the parent participated virtually. The team discussed continuing the student's special education support through the resource room through the end of the 2021-22 school year but at a reduced level. There was additional discussion about goals and accommodations. The parent was to let the school know if she wanted to hold another meeting for further discussion, and the school psychologist was to send paperwork home for the parent's review.

Based on the IEP Team discussion on March 1, 2022, the district amended the draft IEP to include 15 minutes of special education support for 3 days per week in the area of writing through the end of the 2021-22 school year. These services would decrease to one time per week beginning at the start of the 2022-23 school year. The draft did not include any general education support for the student. Speech/language and OT services remained unchanged.

The "updated DRAFT IEP" was sent to the parent by the school psychologist on March 2, 2022 with instructions to "reply all" with questions and/or to accept the IEP with changes.

The parent states she was surprised by the significant reduction in the number of minutes the student would be served in the resource room. The parent was, by her report, "shocked" to see that the student's in-class supports had been removed because that change had not been discussed by the team during either the February

24 or March 1, 2022 IEP Team meeting. The district acknowledges that the team did not discuss this reduction at either the February 24 or March 1, 2022 meeting.

On March 3, 2022, the parent responded via email to the school psychologist stating that she had received the "second draft" of the student's IEP but had not received prior written notice for the "following material changes in service which were discussed in the 3.1.22 meeting and are reflected in the proposed draft." The parent listed the following changes:

1) The reduction in [the student's] specialized instruction within the resource room from 20 minutes 5 days a week (100 minutes/wk) down to 15 minutes 3 days a week (45 minutes/wk) for the duration of the 2021-22 school year;
2) The reduction from 15 minutes 3 times a week to one 15 minute check-in per week for the remainder of the IEP year – which is essentially the removal of any "specialized instruction" in writing from his IEP; and
3) The removal of [the student's] 20 minutes 5 days a week of in class literacy support and 20 minutes 5 days a week of in class writing support.

According to the parent, "both numbers one and two above fall into the category of a material change in the frequency or duration of any one service, while number 3 above fall into the category which requires consent to delete a service (KAR 91-40-27(a)(3))."

In the March 3, 2022 email, the parent also stated that she was having the IEP reviewed by an independent reviewer and would contact the district with further questions.

On March 4, 2022, the school psychologist sent an email to the parent explaining that the district was waiting to hear whether the parent accepted the revised IEP changes before sending prior written notice regarding those changes.

On March 11, 2022, the school psychologist emailed the parent to see if she had questions about the proposed changes.

There was no school in the district from March 14 through Marh 18, 2022 because of Spring Break.

The parent responded to the school psychologist's March 11, 2022 email on March 21, 2022 stating "I received this email, but am still waiting to hear back on some final details from the indepenedent review. I will get back to you as soon as I can."

In her message, the parent outlined "a few compliance issues" which she felt "must be addressed before moving forward." Among other topics, the parent stated

> I have yet to be provided PWN after the team's proposal to remove all in-class supports and significantly decrease his service minutes in direct instruction in writing/spelling within the resource room. (See K.A.R. 91-40-27(a); 34 C.F.R. 300.300).

At 9:57 AM on March 28, 2022 (14 school days after the March 2, 2022 team meeting), the school psychologist sent an email to the IEP team stating that she would be sending out the "Team Meeting Record" for "everyone who attended the meetings to sign" as well as the prior written notice for the parent's signature.

The district received notice from the parent at 12:44 PM on March 28, 2022 that she had filed a formal complaint.

The parent reports that she received the DocuSign documents at 3:45 PM on March 28, 2022. On March 29, 2022, the parent replied to the school psychologist via email, outlining a number of concerns she had with statements included in the prior written notice form. Additionally, the parent requested that the district provide her with documents, data, and other information. In closing, the parent wrote

> …I do not give consent for the special education placement and services action(s) specified in this notice for my child.

On March 28, 2022, the parent signed the prior written notice form indicating that she did not consent to the district's proposed changes. The parent returned a scanned copy of the form to the district as an attachment to an email to the school psychologist on March 29, 2022. In an email dated April 1, 2022, the school psychologist acknowledged receipt of a "scanned…signed copy of the PWN."

The district has made no changes to the services that were in place for the student. He continues to receive all of the services specified in his March 2, 2021 IEP.

Summary and Conclusions

Two meetings were conducted related to the annual review of the student's March 2, 2021 IEP, the first on February 24, 2022 and the second on March 1, 2022. Changes to the student's special education services were discussed during both meetings. The

district revised the special education services listed in the initial draft IEP which had been sent to the parent prior to the February 24, 2022. A second draft document, was sent to the parent for her review on March 2, 2022.

The parent sent an email to the school psychologist for the district on March 21, 2022 stating that the revised draft was – at the request of the parent –being reviewed by someone outside of the district. The parent stated that she was waiting to hear from the reviewer before following up with the district.

When, by March 28, 2022 (14 school days after the second IEP team meeting on March 1, 2022), the parent had neither accepted the district's draft without changes nor offered feedback on additional revisions, the district moved ahead to provide prior written notice of changes to placement and services as they were outlined in the March 2, 2022 draft. While the parent did not receive the prior written notice document until after she had submitted her complaint, the district provided evidence to show that the decision to present prior written notice had been made independent of the filing of the complaint, and the timing was purely coincidental.

The parent did not consent to the district's proposed changes, and the student continues to receive special education and related services in the manner described in his March 2, 2021 IEP.

The district did – within a reasonable time – provide the parent with prior written notice of its proposal to change the special education and related services for the student. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Three: The district failed to allow the meaningful participation of the parent in the student's annual review meeting.

Applicable Statutes and Regulations

Districts must take steps to ensure that one or both of a child's parents are present at each IEP meeting or are afforded the opportunity to participate (K.A.R. 91-40-17(a)). In addition to participating in meetings, parents must be given the opportunity to inspect and review all education records concerning the identification, evaluation or educational placement of the child and the provision of FAPE (free appropriate public education). (See K.A.R. 91-40-25.)

School districts are not required to take meeting notes, but some do. If notes are taken, parents may ask to have the notes read aloud before ending the meeting.

Parents have the right to request that their child's education records be changed if they believe something is inaccurate, misleading or in violation of the student's rights of privacy (34 C.F.R. 300.618).

Parent's Position

The parent asserts that because meeting notes were not read aloud during the student's February and March IEP meetings, her input was not adequately incorporated into the record. She further contends that it was not until after she had received a copy of the district's proposed IEP for the student on March 2, 2022 that she she was provided a copy of the meeting minutes taken by district staff.

District's Position

It is the position of the district that the parent has actively participated in the annual review of the student's IEP. The district contends that parent's input was considered and requests were promptly addressed by the team.

Investigative Findings

According to the director of the cooperative, it is the practice of the distict to develop meeting notes at IEP Team meetings for the purpose of documenting "high points" or important topics discussed during the meeting and to document that required members of the IEP Team were present. The director states that it is typical practice for the parents to be asked whether they would like to have the notes read aloud at the end of the meeting. There is no record of the parent having asked for the notes to be read aloud at the end of either the February 24 or March 1, 2022 meeting and no record of the district having offered to do so.

On March 2, 2022, the school psychologist sent an email to the parent. Attached was a revised draft IEP that included changes made to an earlier draft which had been sent to the parent prior to the February 24, 2022 annual IEP review meeting.

At 4:09 PM on March 2, 2022, the parent sent an email to the school psychologist requesting copies of the meeting records (minutes) for the February 24 and March 1, 2022 IEP Team meetings. The meeting records were sent to the parent at 4:23 PM on March 2, 2022.

On March 23, 2022, the parent sent an email to the school psychologist stating

> Thank you and the team for meeting with me on Tuesday, March 1, 2022, to discuss the draft IEP initially proposed on Thursday, February 24, 2022. Much information was tossed around during both meetings, so want to make sure that we have a complete record between the team meeting notes provided to me on Wednesday, March 2, 2022 and what you find below.

The parent included in her March 23, 2022 email summaries she had generated regarding both meetings. Additionally the parent listed "a few compliance issues [that] must be addressed before moving forward." Among other issues raised by the parent, she noted

> ...the team meeting notes were not reviewed during the meeting and I was not provided a copy to amend and/or sign until I requested one, after receiving the proposed IEP via email, on 3.2.22.

At 9:57 AM on March 28, 2022, the school psychologist sent an email to the IEP team stating that she would be sending out the "Team Meeting Record" for "everyone who attended the meetings to sign" as well as the prior written notice for the parent's signature.

The parent responded via email on March 29, 2022 stating that she would not be signing either the February 24 or March 1, 2022 meeting notes because they did not accurately reflect the meeting based upon the notes she herself had taken. The parent requested that the meeting notes which she had provided to the district on March 23, 2022 "be included in [the student's] permanent educational record."

The district complied with the parent's request. On April 1, 2022, the school psychologist copied and pasted the parent's notes into the Team Meeting Record for each of the meetings and forwarded the amended document to team members for their signatures.

Summary and Conclusions

The parent participated virtually in two team meetings regarding the annual review of the student's IEP. Special education statutes and regulations do not require either the development of IEP Team meeting minutes or the reading of those minutes if taken. While there is no record to show that the minutes of the two meetings were read

aloud at the conclusion of either of the meetings (contrary to the district's practice), no evidence was provided to show that the district refused a request from the parent that the minutes be read.

The district provided the parent with written copies of the minutes on the same day the parent requested them and within one day of the second meeting. The parent then asserted that the meeting minutes developed by the district did not accurately reflect the team discussion and requested that meeting notes she had developed be included in the student education record. Within three days of the parent's request, the school psychologist amended the record to include both the district's meeting minutes and those developed by the parent.

No evidence was provided to show that the parent's participation in either of two meetings related to the student's IEP was limited in any way because minutes of those meetings taken by district staff were not read aloud. There is no record of the parent making a request for the minutes to be read aloud and no statutory requirement for that action. The district responded promptly to the parent's request for copies of the meeting minutes and to her request that the student's education record be amended to include meeting minutes taken by the parent. A violation of special education statutes and regulations is *not* substantiated on this issue.

Corrective Action

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

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT 22FC469-001

FILED AGAINST

UNIFIED SCHOOL DISTRICT # 469

ON APRIL 5, 2022

DATE OF REPORT: MAY 4, 2022

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

Investigation of the Complaint

Jana Rosborough, Complaint Investigator, spoke by telephone with the parent on April 12, 2022. On April 13, 2022, the investigator spoke by telephone with Mary Alice Schroeger, Special Education Director and Daniel Wessel, Superintendent of USD 469 public schools . The investigator corresponded by email on subsequent dates with Ms. Schroeger to request and confirm receipt of materials.

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

- Emails to and from parent with USD 469 staff sent on or around May 18, 2021
- Independent dyslexia evaluation
- Request for reevaluation with parent consent dated May 24, 2021
- Notice of evaluation and eligibility meeting dated September 27, 2021
- Evaluation and eligibility records from October 1, 2021 meeting, including eligibility report and signature pages
- Correspondence around 504 plan, including request for parent referral dated October 27, 2021
- Email from Ms. Schroeger to USD 469 special education team concerning the reevaluation dated November 5, 2021
- Consent for 504 plan dated December 6, 2021
- Request for reevaluation with parent consent dated November 16, 2021
- District Calendar for the 20-21 and 21-22 school year
- Email from MIS clerk indicating snow days and other school cancellations affecting the 21-22 school year dated April 6, 2022

Background Information

This investigation involves a student who is currently enrolled in the sixth grade in his neighborhood middle school. The student has been identified as gifted and is receiving special education services related to that identification.

Issue

In her complaint, the parent alleges the following:

The district has failed to meet two sixty (60) school day re-evaluation timelines.

Applicable Statutes and Regulations

Federal regulations at 34 C.F.R. 300.304 , require the public agency to provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct. State regulations at K.A.R. 91-40-8(f) require that unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child: (1) Conduct the evaluation of the child; (2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the parent as required by K.A.R. 91-40-17(a); and (3) implement the child's IEP in accordance with K.A.R. 91-40-16. K.A.R. 91-40-8(g) states that an agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met: (1) The parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation. (2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.

Parent's Position

The parent contends that she twice signed consent for a reevaluation of the student and both reevaluations were not fully completed within the 60-school day timeline. Furthermore, the parent contends that the first reevaluation only considered existing data with no additional testing conducted which led to an incorrect evaluation of the student and potential eligibility of services to address needs related to the dyslexia diagnosis. The parent also contends that the second reevaluation was never fully conducted, including up until the filing of the complaint, exceeding the 60-school day timeline.

District's Position

The district stipulates that the second reevaluation did exceed the 60-school day timeline. The district does not agree that the first reevaluation was not timely. The district also contends that the implementation of a 504 plan for the student during the timeframe for the second reevaluation provided necessary supports for the student to continue to advance even with the reevaluation delay.

Investigative Findings

On May 18, 2021, the parent emailed USD 469 Special Education team and other school professionals involved in the student's education an independent evaluation the parent had procured that indicated the student has a dyslexia diagnosis. In the subsequent email exchange, Dayna Browne, school psychologist, communicated to the parent that for consideration of the new dyslexia diagnosis, including whether the student would be eligible for special education services, that a reevaluation would be necessary. There was agreement from both the parent and the school that the reevaluation could wait until school was back in session for the next (21-22) school year. The parent signed consent for the reevaluation of the student on May 24, 2021 in the area of academic performance.

On September 27, 2021, the parent received notice of a meeting to review the reevaluation and determine eligibility in additional areas. The meeting was agreed to by the parent. The evaluation and eligibility meeting was held on October 1, 2021, within the 60-school day timeline.

Parents of the student and student's advocate indicated disagreement with the evaluation and eligibility report which did not find that the student was eligible for special education services in the area of specific learning disability. The potentiality of the development of a 504 plan to meet the needs of the student that were indicated in the external evaluation related to the dyslexia diagnosis, was noted in the report.

On October 27, 2021, Ms. Schroeger emailed the parent forms related to development of a 504 plan. The parent agreed to a 504 evaluation on November 3, 2021 with supporting notes indicating the 504 plan eligibility and plan being developed while a "full" IDEA reevaluation was conducted.

On November 16, 2021, the parent signed consent for a reevaluation of the student in the areas of health/motor ability, vision, hearing, social emotional, general intelligence, academic performance, communicative status, transition skills, and sensory profile. As of the filing of the complaint on April 5, 2022, the reevaluation has not been completed, no evaluation and eligibility meeting has taken place, and subsequently no additional services and supports, if identified as eligible, have been implemented.

Summary and Conclusions

The first reevaluation that consent was signed for on May 24, 2021 and was completed with a meeting held on October 1, 2021 was within the 60-school day timeline. The parent has noted concerns about the adequacy of that evaluation, and it is not within the purview of this complaint investigation to address those concerns. The investigator will note that the second reevaluation to which the parent consented to on November 16, 2021 seems to indicate that the parent's concern about the limited scope of the first reevaluation was not without basis.

The district stipulates that the second reevaluation that was consented to by the parent on November 16, 2021 is still not completed and the writing of the report is beyond the 60-school day timeline. 504 plan supports have been place for the student, as related to the dyslexia diagnosis, but there is a marked discrepancy between the areas the second reevaluation is considering, with a note that it is referred to as the "full" evaluation by the USD 469 team, and the limited scope of the current 504 in place.

Furthermore, there remain considerable concerns about the delay in second reevaluation with the end of the 21-22 school year quickly approaching and possible eligibility for additional services and supports not yet determined for the student.

Corrective Action

Information gathered during the investigation has substantiated a violation of special education statutes and regulations. Specifically, violations have occurred with regard to K.A.R. 91-40- 8(f) which requires that unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child: (1) Conduct the evaluation of the child; (2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child; and (3) implement the child's IEP in accordance with K.A.R. 91-40-16.

Therefore, USD #469 is directed to take the following actions:

1. Submit to Special Education and Title Services (SETS), within 15 calendar days of the date of this report, a written statement of assurance stating that it will comply with K.A.R. 91-40-8(f) timelines for evaluation and reevaluation.

2. Within 15 calendar days of the date of this report, USD #469 shall develop and submit to SETS for approval, a plan to complete the reevaluation with the student named in the complaint before the end of the 21-22 school year. The plan must include an offer of compensatory services if the student is determined eligible for special education and related services in additional areas not already identified. The offer of compensatory services shall be based on a calculation of the number of school days from November 16, 2021 to the date that the 60 school-day timeline to complete the reevaluation occurred. Then, beginning on that date, USD #469 shall calculate the number of school days remaining in the current school year and offer at least one hour of compensatory services for each of those school days up to and including the day the eligibility determination is made with regard to disability. The compensatory services offered under this plan may be provided during the summer months.

3. Within 5 school days of the date the district receives approval of the plan described above under Corrective Action 2, the district shall contact the parent to schedule a meeting to present the approved plan to the parent. The parent shall have the option of either accepting the plan as written, accepting a portion of the plan, or rejecting it. The district shall notify SETS of the parent's decision regarding the plan and shall report back once the reevaluation and subsequent actions, if any, based on the reevaluation are determined as needed.

4. Within 40 calendar days of this report, USD #469 shall provide to SETS an updated policies, practices, and procedures as it relates to timely evaluation, including how such policies, practices, and procedures will be communicated and trained with all necessary staff.

5. Further, USD #469 shall within 10 calendar days of the date of this report, submit to SETS 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 or conclusion in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(F), which can be found at the end of this report.

Jana Rosborough

Complaint Investigator

KANSAS STATE DEPARTMENT OF EDUCATION

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #349

ON APRIL 12, 2022

DATE OF REPORT MAY 12, 2022

This report is in response to a complaint filed with our office on behalf of _____ by her previous special education teacher, _____. In the remainder of the report, _____ will be referred to as "the student." _____'s father is _____ and in the remainder of this report he will be referred to as "the father." _____ will be referred to as the "complainant" in the remainder of the report.

The complaint is against USD #349 (Stafford Public Schools) who contracts with the South Central Kansas Special Education Cooperative (SCKSEC) to provide special education and related services to students enrolled in USD #349. In the remainder of the report, "USD #349," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on April 12, 2022 and the 30-day timeline ends on May 12, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the complainant by telephone on April 13, 2022 and the father on April 28, 2022.

Dr. Bob Diepenbrock, Director of SCKSEC was interviewed on April 19, 2022 and Mrs. Kim Ghumm, Principal, Stafford Elementary School, USD# 349 was interviewed on April 26, 2022.

The Complaint Investigator also exchanged emails with the #USD 349 staff between April 1, 2022 and April 28, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the LEA and the complainant. The following materials were used as the basis of the findings and conclusions of the investigation:

- Programs and Services Guide SCKSEC, May 2020
- SCKSEC Meeting Notes, dated November 19, 2021
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Changes in Service, Changes in Placement, Request for Consent, dated November 19, 2021
- Individualized Education Plan (IEP), dated November 22, 2021
- AIMSWebPlus Student Profile for School Year 2021-2022, Fall and Winter scores

Background Information

This investigation involves a 7-year-old female student who is currently enrolled as a second grader at Stafford Central Elementary School in USD #349. She lives with her father and two brothers.

The student attended first grade in USD # 268 and did not receive any special education or related services. She enrolled in USD #349 at the beginning of second grade and her performance on the AIMSWebPlus reading and mathematics screening assessment revealed low scores in all areas. As a result, she was referred to the Student of Concern Process (SOC) for an initial evaluation and was determined to be a child with a disability in need of special education and related services. She was found eligible as a child with developmental delays on November 19, 2021. Her IEP team then met, and an IEP was developed and in effect on November 22, 2021.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of

noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

> ISSUE ONE: The USD #349, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide accommodations specified in the student's IEP during the past twelve months, specifically the text to speech accommodation during the winter administration of the AIMSWebPlus.

Positions of the Parties

The complainant alleged that the student was denied use of her "text read aloud via human or electronic reader" accommodation when taking the AIMSWebPlus during the winter testing session thereby reducing her test scores and not following her IEP for using the text reading accommodation.

The district responded that she did use her "text read aloud via human or electronic reader" accommodation on all AIMSWebPlus subtests for which the accommodation would not invalidate the test scores; however, this accommodation was not provided on the reading fluency subtest because that accommodation would invalidate the subtest score. USD #349 reported that the test administrator used the accommodations listed in all students' IEPs to set the computer-driven accommodations and the selected accommodations were automatically delivered when each student logged on to take the AIMSWebPlus. USD #349 indicated that the student did not use the text read aloud accommodation during the fall administration of the AIMSWebPlus because she was not yet identified as a student with special education needs and no IEP was in place at that time

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the father, the complainant, and staff in USD #349.

The student initially took the computer-based district-wide AIMSWebPlus Reading and Mathematics tests in her second grade classroom with her teacher proctoring the test. The testing occurred beginning August 30, 2021 and ending September 3, 2021.

According to the November 19, 2021 PWN and staffing notes the student was referred and found eligible for special education and related services and an initial IEP was developed and in effect beginning November 22, 2021.

The November 22, 2021 IEP included an accommodation for "text read aloud via human or electronic reader" when given materials above the student's level of skill for both assignments and assessments in all settings - both general and special education until reading of assigned text is completed.

The November 22, 2021 IEP stated, "The accommodation(s) listed on this IEP will be available for use on all assessments given to the student unless the accommodation invalidates the assessment results or is not allowed by assessment guidelines."

The principal reported that the "text read aloud via human or electronic reader" accommodation was used for the vocabulary and reading comprehension subtests during the winter administration of the AIMSWebPlus, but not on the reading fluency subtest.

Tracey Pettijohn, the Title 1 teacher, did all training for the AIMSWebPlus test administrators and was responsible for inputting the IEP accommodations into AIMSWebPlus for individual student use.

The student took the computer based AIMSWebPlus Reading and Mathematics tests in a special education classroom with the complainant proctoring the test. The testing occurred beginning December 6, ending December 10, 2021.

The complainant reported that the "text read aloud via human or electronic reader" accommodation was not available to the student during the testing and reported this was a violation of the student's IEP to both the general education second grade teacher and the building administrator.

The principal indicated that USD #349 has a procedure for ensuring the accommodations required by each student's IEP were available for AIMSWebPlus testing. First, the test administrator was provided with a list of the student's allowable accommodations according to each student's IEP. Next, the test administrator accessed the tests administration settings in the computerized platform and then individually selected the accommodations required by the IEP for each student. Those accommodations were then automatically accessible when the student logged on to test. Further, the AIMSWebPlus was designed so that accommodations could not be accessed in test areas for which the scores would be invalidated. For example, the oral reading fluency would not be accessible for read aloud items.

The principal reported that the student's AIMSWebPlus composite scores in both reading and mathematics increased between the fall and winter administrations; Reading scores increased from the 8th percentile to the 18th percentile and Math

scores increased from the 6th percentile to the 19th percentile thus demonstrating that the accommodations required by the student's IEP were helping to allow the student to show what she knows in areas where reading the text had previously lowered her scores.

Applicable Regulations and Conclusions

The IDEA at 34 C.F.R. 300.320(a)(6)(i) and K.A.R. 91-40-16(B) provides:

> Any accommodation regularly used in instruction should be used on classroom assessments for children with IEPs. Individual school districts may establish their own policies for allowable accommodations for district-wide assessments. All accommodations that are necessary in order for the child to participate in state or district-wide assessments must be documented on the IEP.

In this case, the student's IEP requires an accommodation for "text read aloud via human or electronic reader" for both assignments and assessments and therefore was necessary for the student's participation in the district testing using the AIMSWebPlus in English and Math. It is further found that the student used the accommodation during testing as it was programmed in by a specially trained test coordinator who had access to the accommodations and settings. Finally, AIMSWebPlus scores in which the accommodation was used were much higher, while scores on subtests that could not use the accommodation without invalidating the score did not show progress between the first and second administration.

In addition, federal regulations, at 34 C.F.R. 300.160(b), state:

> (b) Accommodation guidelines. (1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations. (2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must – (i) identify only those accommodations for each assessment that do not invalidate the score; and (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score (emphasis added).

Accordingly, the provision in this student's IEP stating that specified accommodations "will be available for use on all assessments, unless the

accommodation invalidates the assessment results or is not allowed by assessment guidelines," is consistent with federal law.

Based on the foregoing, the allegation that USD #349 failed to provide the accommodation specified in the student's IEP during the winter administration of the AIMSWebPlus test administration were not substantiated.

> ISSUE TWO: The USD #349, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to ensure the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation during the past twelve months.

Positions of the Parties

The complainant alleged that the general education teacher did not have access to the student's IEPs during the 2021-2022 school year. As a result, the student's access to necessary services and instruction was denied.

USD #378 responds that it is their school practice that the general education grade level teacher for each student attend the student's IEP meeting and receive a copy of the proposed IEP in order to participate in the meeting. It is also the school's practice that, at the beginning of each school year, the special education teacher prints out copies of the IEP-at-a-Glance from the district's IEP management system and distributes a copy to all teachers of record for the student.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #378.

The findings of Issues One are incorporated herein by reference.

The November 19, 2021 listed the student's general education teacher as attending the meeting to discuss eligibility and services. The notes indicate she described current classroom performance.

The November 19, 2021 SCKSEC Meeting Notes listed the student's general education teacher as attending the meeting to discuss eligibility and services. The notes indicate she described current classroom performance.

The November 22, 2021 IEP recorded that the general education and special education teachers would both be assisting the student with the accommodation for organization.

The second grade general educator for the student attended and participated in the November 22, 2021 IEP

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R Sec. 300.323 (d) (2) (ii) specify that all general education teachers of the child must be informed by the IEP team of their specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. As well, state regulations at K.A.R. 91-40-16(b)(4), (5) The child's IEP must be accessible to each general education teacher who is responsible for its implementation .

In this case, the school has a regular practice for distributing the revised annual IEPs and to ensure teachers and all staff responsible for the students' instruction are provided with the IEP contents. Further, the student's IEP documents that all service providers providing IEP and related services for the student participated in the IEP meeting.

Based on the foregoing, the allegation that #USD 349 failed to ensure the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation during the past twelve months is not substantiated.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Donna Wickham

Donna Wickham, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON APRIL 12, 2022

DATE OF REPORT MAY 12, 2022

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

The complaint is against USD #259 (Wichita Public Schools). In the remainder of the report, "USD #259," the "school," the "district" or the "local education agency (LEA)" shall refer to this responsible public agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on April 12, 2022 and the 30-day timeline to investigate this complaint ends on May 12, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on April 19, 2022 and again on May 5, 2022. Kelly Patton, private investigator license D5984 and parent ally appointed by the judicial court joined the parent for the interview on May 5, 2022 with written consent from the parent.

USD #259 made the following school staff available for a telephone interview on May 3, 2022:

- Amy Godsey, Mediation/Due Process Supervisor for USD #259
- Matthew Snodgrass, Principal for Gammon Elementary School
- Ryan Alliman, Director of Interrelated Student Services Program for USD #259

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Student Contact Log dated between September 15, 2020 and February 25, 2022
- Multidisciplinary Team Report dated October 20, 2020
- Individualized Education Program (IEP) for the student developed on October 20, 2020
- Prior Written Notice (PWN) for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated October 20, 2020
- Email reminder of required Diapering/Lifting/Toileting training requirements dated August 18, 2021 at 8:06 a.m. written by Justin Hawpe, Director of Special Education – Categorical, to all USD #259 building principals
- Wichita Public Schools Health Services Diaper/Toileting Procedures and Training Log
- IEP for the student developed on October 14, 2021
- PWN for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated October 14, 2021
- Email dated January 6, 2022 at 9:48 a.m. written by the father to Ms. Schuette
- Doctor's Excusal from School Note for January 17, 2022 through January 31, 2022 signed by Dr. Sophia Zinkovsky
- Letter dated January 20, 2022 written by Dan Lawrence, General Counsel for USD #259, to the father
- PWN for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated January 27, 2022
- PWN for Evaluation or Reevaluation and Consent dated February 23, 2022 with handwritten notes from the father
- Notice of Student Absences Letter dated February 28, 2022 written by Mr. Snodgrass
- Daily Attendance Profile dated between August 17, 2021 and April 19, 2022
- Email dated March 7, 2022 at 8:46 a.m. written by the father to Emma Schuette, Special Education Teacher

- Email dated March 24, 2022 at 2:51 p.m. written by Matthew Snodgrass, Principal, to the father
- Email dated March 24, 2022 at 3:20 p.m. written by the father to Mr. Snodgrass
- Email dated April 5, 2022 at 1:58 p.m. written by Mr. Snodgrass to the father
- Email dated April 5, 2022 at 2:26 p.m. written by the father to Mr. Snodgrass
- Email dated April 6, 2022 at 8:34 a.m. written by the father to Ms. Schuette
- Email dated April 6, 2022 at 8:36 a.m. written by the father to Mr. Snodgrass
- Email dated April 6, 2022 at 9:35 a.m. written by the father to Ms. Schuette
- Email dated April 6, 2022 at 9:35 a.m. written by Mr. Snodgrass to the father
- Email dated April 6, 2022 at 10:43 a.m. written by the father to Mr. Snodgrass
- Photo of Dollar General receipt dated April 6, 2022
- Email dated April 7, 2022 at 12:03 a.m. written by the father to Mr. Snodgrass and Ms. Schuette
- Email dated April 7, 2022 at 8:26 a.m. written by the father to Mr. Snodgrass and Ms. Schuette
- Photos of Dollar General receipt dated April 12, 2022
- Email dated April 20, 2022 at 10:53 a.m. written by Mr. Snodgrass to the father
- Email dated April 20, 2022 at 11:01 a.m. written by the father to Mr. Snodgrass
- Email dated April 20, 2022 at 11:31 a.m. written by the father to the Complaint Investigator
- Initial Speech and Feeding Evaluation completed by Alisha Roemer, Speech/Language Pathologist at the Speech, Swallow, and Voice Center dated April 13, 2022 and provided to USD #259 on April 20, 2022
- PWN for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated April 20, 2022
- Proposed IEP Amendment provided to the parent on April 21, 2022
- PWN for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated April 21, 2022
- Email exchange between Amy Godsey, Mediation/Due Process Supervisor, and Ms. Schuette dated April 21, 2022 at 2:26 p.m.
- Receipts for Advanced DNA Test for Ancestry and Post Office tracking receipt dated April 25, 2022
- Diapering/Toileting Logs for the student for the months of March and April 2022
- 2021-22 School Year Calendar for USD #259

- USD #259 Response to the Allegations written by Ms. Godsey dated April 26, 2022

Background Information

This investigation involves a seven-year-old male student currently enrolled in the first grade at Gammon Elementary School in USD #259 in order to receive special education and related service in a special program for students with low-incidence disabilities. He was initially evaluated for special education on October 20, 2020 during kindergarten while attending his neighborhood school in USD #259, Adams Elementary School. At that time, the multidisciplinary team determined the student met the eligibility criteria to be identified as a student with the exceptionality of Autism. The student currently receives specialized instruction, occupational therapy, physical therapy, and language therapy due to significant delays in adaptive behavior, communication, attention, social skills, academic skills as well as sensory deficits and both fine and gross motor skills. The student lives at home with his father.

The student was initially diagnosed with Autism at the age of 4 on December 14, 2018 by the Heartspring School while he was living with his biological mother; however, the student did not receive any early childhood special education services according to records and the father's report.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parents raised two issues that were investigated.

> ISSUE ONE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically related to toileting, during the past 12 months.

Positions of the Parties

The father reported that USD #259 has not been providing the student with enough support in regards to toilet training. He stated that the school staff consistently allow the student to have two to three accidents per day and that the school principal "harasses parent almost daily about his son's underwear." The father stated that he has provided clean underwear for the student on a daily basis and provided receipts showing purchases of underwear, wipes, and detergent.

The parent believes the toileting accidents are happening because the student is nonverbal and does not have access to the appropriate technology to communicate that he needs to use the toilet. The father thinks school staff should be checking with the student at least twice per hour and using assistive technology such as an iPad or a picture exchange communication system (PECS) to allow the student to communicate when he needs to use the toilet. He also believes the student should be using a visual routine for using the toilet appropriately whenever he is toileting.

Because the school staff are failing to implement the student's IEP in regards to toileting, the father stated, "Gammon Elementary is not the place I want my child attending school. And this is due to failure of entrusted individuals with the school district when rendering aid to a developmental child who just simply loves school and wants to learn and just be a child."

USD #259 reported the student is currently placed in a district clustered "Mixed Abilities program" located at Gammon Elementary School. The district describes this program as designed to serve children with low-incidence disabilities in a small, structured setting with a higher adult-to-student ratio. LEA staff indicated that children in this program typically receive services under the identification of Autism or Intellectual Disability and, when considering the least restrictive environment (LRE) in light of child's circumstances, the program allows children with disabilities to receive their free appropriate public education (FAPE) in a setting that maximizes their opportunities to be educated with nondisabled peers to the extent appropriate. School staff stated,

> The structure of the Mixed Abilities program incorporates toileting assistance for children as needed; toileting needs do not always require a prescribed action in an IEP.

School staff believe the student's IEP has been implemented as written. They reported that the IEPs in effect during the past 12 months do not include toileting as a need for the student. Emma Schuette, the student's special education teacher, stated,

> At the beginning of the 2021-22 school year when he transitioned to in-person, the child wore underwear most of the time, and would independently run into the bathroom to urinate. He needed prompting to wash his hands. At some point in the fall, he started to be sent in pull ups. Per USD #259 protocol, a toileting log must be kept for children who require any toileting assistance whether or not it is identified as a need in the IEP.

USD #259 acknowledged its toileting assistance protocol was not implemented until March 2022. Since that time, a toileting log has been kept in accordance with school district protocol and parent request. School staff indicated that toileting logs have been provided to the father for the past two months.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #259.

The student was initially evaluated on October 20, 2020 and found eligible for special education and related services under the exceptionality category of Autism. The Multidisciplinary Team Report noted that the student has significant delays in self-help skills and requires assistance with toileting.

There were two IEPs in effect during the past 12 months (April 18, 2021 through the current date). The first IEP was developed on October 20, 2020 with the parent in attendance and does not include toilet training as a goal or service required by the student. This IEP also does not include any accommodation or modification related to toileting.

The second IEP was developed on October 14, 2021 with the parent in attendance. In the present level of functional and academic performance, it states, "the student has greatly improved his toileting skills, but occasionally has accidents." This IEP also notes

that “the student was introduced to a PECS communication book with various core word icons and a sentence strip. While it is being implemented during speech-language therapy sessions to target his current goals, as well as its implementation during various times throughout his school day, he is not yet independent at his use for it. He currently does not have a successful, consistent method of communication.”

The October 14, 2021 IEP does not include toilet training as a goal or service required by the student. This IEP also does not include any accommodation or modification related to toileting.

There are multiple emails between the parent and school district staff regarding diapers, underwear as well as the district’s toileting procedures and protocol. A March 7, 2022 email written by the father stated,

> Effective immediately the student will start wearing underwear while at school. The student will not be placed in pull-ups anymore while at school. Effective today dad will no longer be sending pull ups. This is due to learning the child's verbal cues for when he needs to utilize the bathroom. Staff need to be respectful of not putting the child and pull-ups anymore - pull ups are only worn at night time. And the child's bag contains two sets of underwear.

The district has implemented this request since the date of this request.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child’s IEP.

In this case, neither of the two IEPs in effect during the past 12 months included any goal, services, accommodation, or modification related to toileting. Based on the

foregoing, a violation of special education statutes and regulations is not substantiated for failing to implement the student's Individualized Education Plan (IEP) during the past 12 months.

> ISSUE TWO: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with appropriate prior written notice refusing a parent request made at an IEP team meeting within the past 12 months.

Positions of the Parties

The father reports he has had made multiple requests for things to be added to the student's IEPs over the past 12 months but that USD #259 has never responded and added the things he requested to the student's IEP. He specifically stated that he requested to have something worded in the IEP where the child can keep his dignity when it comes to toileting. The father also indicated he has made requests related to adding the use of a GPS tracking device due to concerns with eloping behavior and a food log due to concerns with feeding and swallowing. In addition, the father reported that he has requested an iPad, and an Autism ID badge be added to the student's IEP to address the student's significant delays in communication as well as noise canceling headphones be added to the IEP to address sensory issues.

USD #259 reported an IEP team meeting was held on October 14, 2021. At that meeting, the occupational therapist proposed a potential exit from occupational therapy (OT) services. However, due to the parent's concerns and his request to continue the OT goals and services, the OT services remained unchanged. The father acknowledged that when he objected to the proposed reduction in OT services at the IEP team meeting, the district staff listened to his concerns and continued to include those services in the student's current IEP.

USD #259 also reported the parent requested a reevaluation of the student to determine if a change in placement to a special day school would be appropriate and that the school district responded by providing him with a prior written notice (PWN) for a reevaluation with assessment. The father acknowledged that he did receive a PWN asking for written consent for the reevaluation with assessment. School staff and

the father both reported that written consent was obtained at the end of February 2022 and that the reevaluation is currently being conducted.

The district acknowledged that the parent has made six requests for additions to the student's IEP via email and/or phone calls; however, each of these requests has been addressed through the provision of a PWN. USD #259 believes that they have responded appropriately to each of the father's requests made during the past 12 months.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #259.

The findings of Issue One are incorporated herein by reference.

An IEP team meeting was held on October 14, 2021 with the parent in attendance. The OT proposed exiting the student from OT services; however, the parent was not in agreement. The IEP team left the OT services unchanged in the current IEP. No PWN was provided to the parent because there was not a change in services or a change of placement.

On January 6, 2022, the father contacted Ms. Schuette via an email requesting to schedule an IEP meeting and requesting that the AngelSense device owned by the father be added to the student's IEP to address his concerns with student safety. The AngelSense device is a GPS device for monitoring a student's whereabouts that includes both listening and speaking capabilities.

School staff reported calling the parent to try and schedule an IEP meeting without success. On January 20, 2022, a letter written by Dan Lawrence, General Counsel for USD #259, was sent to the father listing two possible dates to hold the IEP team meeting. On January 26, 2022, Mr. Snodgrass contacted Kaitlyn Wagle, the student's targeted case manager at New Hope Services in another attempt to schedule an IEP team meeting. At that time, the targeted case manager contacted the parent and an IEP team meeting was mutually agreed upon for that same day at 9:30 a.m.

School staff reported the IEP team meeting was held via Microsoft Teams with the parent and case manager attending via a phone call. Unfortunately, the parent only stayed on the phone call for a short time and then abruptly disconnected. The school members of the team continued the meeting and discussed the parent's request for the AngelSense device at school. The parent was provided with a PWN refusing the request on January 27, 2022.

USD #259 staff reported and the father confirmed that he notified the district on February 14, 2022 that he did not believe Gammon Elementary School was the appropriate placement for the student and requested a reevaluation of the student to see if he was eligible to attend a district-wide special day school would be more appropriate. On February 23, 2022, USD #259 provided the parent with a PWN for a reevaluation with additional testing and request for consent. The parent gave his written permission on February 28, 2022 and the reevaluation is currently being conducted. The eligibility determination meeting will be held prior to May 24, 2022.

On February 15, 2022, the parent participated in a parent/teacher conference via Microsoft Teams and requested the student use a communication device as part of his speech/language services. The speech/language pathologist (SLP) and the parent discussed his request and were in agreement to introduce the iPad into his current 30 minutes per week of language therapy. Based on that discussion, the student is now using an iPad during his speech/language therapy sessions on a trial basis. The SLP reported the student is responding well to the iPad as an augmentative communication device. No PWN was provided to the parent because this change did not require a change in services or a change of placement.

On March 29, 2022, the father requested that school staff take inventory of foods that the students takes at least three bites of so that he could compare that data with notes from the Speech, Swallowing, and Voice Center's food therapy evaluation scheduled for April 13, 2022. The father also requested that a food log be added to the student's IEP. A copy of the food therapy evaluation was provided to the district and was considered by the school members of the IEP team on April 19, 2022 along with the parent's request for a food log to be added to the IEP. Because the school staff had not

observed any eating or associated food issues in the school setting, USD #259 provided the parent with a PWN dated April 20, 2022 refusing the request to add a food log to the IEP.

It is noted that Ms. Godsey and the parent discussed his concerns with the educational program at Gammon Elementary School on April 26, 2022. In an effort to provide a source of resolution, Ms. Godsey offered the parent the option of a reassignment to another Mixed Abilities program in another elementary school building. She explained this would not be a change in services or a change of placement but simply a change in the location of the services required by the student's IEP. In order for the parent to choose this option for the 2022-23 school year, he will need to complete the request for reassignment form available from Ms. Godsey and submit it as soon as possible.

On April 7, 2022, the parent sent an email to Ms. Schuette and Mr. Snodgrass requesting to add the accommodation of attaching an Autism ID badge to the student's backpack for safety reasons and using noise canceling headphones to reduce auditory stimulation. Because the parent and the LEA representatives were in agreement, an IEP amendment was prepared adding the two accommodations to the student's IEP and a PWN was provided to the father on April 21, 2022 proposing to add these accommodations to the student's IEP.

The parent indicated that he specifically requested to have something worded in the IEP where the child can keep his dignity when it comes to toileting. However, USD #259 staff did not remember receiving such a request and the emails between school staff and the parent in regards to toileting dated between April 5 and April 7, 2022 focused on the need for extra underwear at school and did not include any request for changes in the student's IEP.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.503(a) that require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability and state regulations at K.A.R. 91-40-27(a)(3) that

require school districts to obtain parent consent before making a material change in services or a substantial change in placement.

In this case, documentation and interviews found that USD #259 responded to six separate parent requests for changes to the IEP during the past 12 months.

- On October 14, the parent requested the OT services remain the same as the previous IEP and USD #259 agreed with that request; because there was no change in services or placement, no PWN was required to be provided.
- On January 6, 2022, the parent requested an IEP team meeting and the addition of the use of the AngelSense device to the student's IEP. USD #259 responded by attempting to schedule an IEP team meeting in writing and via phone calls. The parent agreed to hold the meeting on January 26, 2022 but abruptly left the phone call and did not participate in the meeting. The school members of the IEP team discussed the parent's request and the parent was provided with a PWN dated January 27, 2022 refusing to add the AngelSense device to the student's IEP.
- In response to the parent's request on February 14, 2022 for a reevaluation, USD #259 provided the parent with PWN on February 23, 2022 proposing to conduct the reevaluation with assessment that the parent had requested.
- On February 15, 2022 the SLP agreed with the parent's request to introduce the use of an iPad during the currently provided 30 minutes per week of speech/language therapy. No PWN was provided as this change did not involve a change of services or a change of placement.
- On March 29, 2022, the father requested that a food log be added to the student's IEP in order to compare data with an upcoming food therapy evaluation being conducted by the Speech, Swallowing, and Voice Center on April 13, 2022. Based on informal observations in the school setting and the results of the food therapy evaluation, USD #259 provided the parent with a PWN refusing the parent's request to add a food log to the student's IEP on April 20, 2022.
- On April 7, 2022, the parent requested that two accommodations be added to the student's IEP. Because the parent and LEA representative were in agreement with the request, USD #259 provided an IEP amendment and a PWN dated April 21, 2022 for addition the two accommodations.

The evidence presented supports the finding that USD #259 has appropriately responded to parent requests made during the past 12 months. Based on the foregoing, a violation of special education statutes and regulations is not substantiated.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 pa

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 259,
Wichita Public Schools: 22FC259-006

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on April 12, 2022, by _____ on behalf of his son, _____. In the remainder of this decision, Mr. _____ will be referred to as "the parent," and _____ will be referred to as "the student." An investigation of the two issues presented in the complaint was undertaken by a complaint investigator on behalf of the Special Education, and Title Services team at the Kansas State Department of Education. Following the investigation, a Complaint Report, addressing the parent's allegation, was issued on May 12, 2022. That Complaint Report concluded that there was no violation of special education statutes and regulations

Thereafter, the parent filed an appeal of the Complaint Report. Upon receipt of the appeal, an appeal committee was appointed and it reviewed the original complaint filed by the parent, the Complaint Report, the parent's notice of appeal, and the district's response to the appeal. The Appeal Committee has reviewed the information provided in connection with this matter and now issues this Appeal Decision.

DISCUSSION OF ISSUES ON APPEAL

This complaint involved two issues. The investigator produced a 13-page report, indicating that she had conducted interviews with the parent and with three individuals at the district, and had reviewed forty-one documents: each separately identified in the report. Based on these interviews and documents, the investigator's report provided specific findings of facts and concluded that there was no violation of special education laws and regulations with regard to either issue.

The parent filed his appeal by e-mail on May 13, 2022. In his appeal, the parent said only: "Yes hi I received notice today for Nancy that I could file an appeal if I was not happy with the decision or I did not feel that the decision was right. I am formally requesting a docketed appeal."

A copy of the regulation regarding the filing of an appeal [K.A.R. 91-40-51(f)] was attached to the Complaint Report that was provided to the parent. That regulation states, in part, "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Accordingly, the burden for supplying a sufficient basis for appeal is on the party submitting the appeal. When a party submits an appeal and makes statements in the notice of appeal without support, the Committee does not attempt to locate the missing support. Accordingly, the Appeal Committee does not conduct a separate investigation. Instead, the Appeal Committee's function is to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

On May 16, 2022, Brian Dempsey, the Assistant Director of Special Education at the Kansas State Department of Education, sent an e-mail response to the parent regarding his appeal. In that response, Mr. Dempsey included another copy of the state regulations regarding appeals, and added: “Mr. _____: Please find below a portion of K.A.R. 91-40-5(f) regarding appeals. I bolded and italicized the last sentence which states each notice of appeal shall provide a detailed statement of the basis for alleging the report is incorrect. Please provide a detailed statement describing your allegation that the report is incorrect.”

On May 16, 2022, the parent responded to Mr. Dempsey with this statement: “On the basis of fraud and conspiracy and differntrial (sic) treatment of a developmental child who was subjected to cruel and unusual punishment at the hands of people who were supposed to uphold a certain standard of care.”

Nothing more has been provided by the parent in this appeal. After reviewing all of the information presented in this complaint and in this appeal, the Appeal Committed finds nothing to indicate that any portion of the complaint report is incorrect.

CONCLUSION

The Appeal Committee concludes that there is sufficient evidence to support the findings and conclusions of the investigator. Therefore, the findings and conclusions in the Complaint Report are sustained. The allegation of a violation of special education laws and regulations is not substantiated.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 26th day of May, 2022.

APPEAL COMMITTEE:

Mark Ward

Brian Dempsey

Amy Rzadczynski

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #230
ON APRIL 25, 2022

DATE OF REPORT MAY 25, 2022

This report is in response to a complaint filed with our office on behalf of students with disabilities enrolled in the Kansas Virtual Academy by Claire Behrens, a school psychologist. In the remainder of the report, Ms. Behrens will be referred to as "the complainant".

The complaint is against USD #230 (Spring Hills Public Schools) which provides special education services to students enrolled in Insight and the Kansas Virtual Academy (KSVA). In the remainder of the report, "USD #230," the "school," the "district" or the "local education agency (LEA)" shall refer to these responsible public agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on April 25, 2022 and the 30-day timeline to investigate this complaint ends on May 25, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the complainant by telephone on April 28, 2022, and May 19, 2022.

USD #230 made the following school staff available for a telephone interview on May 12, 2022:

- Cindy Dziadosz, Director of Special Services at USD #230
- Cassie Barton, Head of School for Insight and KSVA

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the complainant and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Formal Complaint Request Form dated April 15, 2022 completed by the complainant
- December 1st Child Count Report for the 2020-21 School Year
- December 1st Child Count Report for the 2021-22 School Year
- The 2021-22Insight School of Kansas and Kansas Virtual Academy Student and Learning Coach Handbook
- Student 1 Documentation (Other Health Impaired)
    - Kansas Individual Data on Students (KIDS) Assignment Report for the 2021-22 school year (enrolled August 25, 2021)
    - Evaluation Report dated April 28, 2022
    - Individualized Education Plan (IEP) dated 4/28/22
- Student 2 Documentation (Orthopedic Impairment)
    - KIDS Assignment Report for the 2021-22 school year (enrolled August 25, 2021)
    - Evaluation Report dated August 19, 2020
    - IEP dated October 5, 2021
- Student 3 Documentation (Gifted)
    - KIDS Assignment Report for the 2021-22 school year (enrolled August 26, 2020)
    - Evaluation Report dated May 10, 2021
    - IEP dated April 22, 2022
- Student 4 Documentation (Autism)
    - KIDS Assignment Report for the 2021-22 school year (enrolled August 25, 2021)
    - Evaluation Report dated October 12, 2020
    - IEP dated February 28, 2022
- Student 5 Documentation (Developmental Delay)
    - KIDS Assignment Report for the 2021-22 school year (enrolled August 31, 2021)
    - Evaluation Report dated April 18, 2019
    - IEP dated October 8, 2021

- Student 6 Documentation (Emotional Disturbance)
    - KIDS Assignment Report for the 2021-22 school year (enrolled August 19, 2019)
    - Evaluation Report dated April 30, 2021
    - IEP dated April 14, 2022
- Student 7 Documentation (Speech/Language Impairment)
    - KIDS Assignment Report for the 2021-22 school year (enrolled August 25, 2021)
    - Evaluation Report dated October 12, 2021
    - IEP dated November 11, 2021
- Student 8 Documentation (Hearing Impairment)
    - KIDS Assignment Report for the 2021-22 school year (enrolled August 25, 2021)
    - Evaluation Report dated September 9, 2019
    - IEP dated December 2, 2021
- Student 9 Documentation (Specific Learning Disability)
    - KIDS Assignment Report for the 2021-22 school year (enrolled August 26, 2020)
    - Evaluation Report dated April 12, 2022
    - IEP dated April 12, 2022
- Student 10 Documentation (Intellectual Disability)
    - KIDS Assignment Report for the 2021-22 school year (enrolled September 15, 2021)
    - Evaluation Report dated May 18, 2019
    - IEP dated May 11, 2021 and amended on October 18, 2021
- Response to the allegations dated May 9, 2022 written by Cindy Dziadosz, Director of Special Services at USD #230

Background Information

USD #230 offers parents and students the choice of enrolling in the school district in either an in-seat or an online setting. The Kansas Virtual Academy (KSVA) is the full time online public school for students in kindergarten through sixth grade while Insight School of Kansas (ISKS) is the full time online public school for students in grades seven through twelve. All online students work in grade level curriculum through the

Stride K-12 curriculum with the accommodations identified in their IEPs. This investigation involves all students with IEPs enrolled in ISKS and KSVA during the past 12 months.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the complainant raised one issue that was investigated.

> ISSUE ONE: The USD #230, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), only identified and/or served students with specific learning disabilities during the past 12 months.

Positions of the Parties

The complainant reported that she was contracted to conduct both initial and triennial special education evaluations for students enrolled in ISKS and KSVA during the 2021-22 school year but was later informed that she could only identify students under the exceptionality category of specific learning disability. She stated, "They told me I could not qualify students for OHI (other health impaired), ASD (autism spectrum disorder), or anything other than SLD (specific learning disability) because the school did not provide other services other than for SLD." The complainant believes USD #230 is not fulfilling its obligation to identify and serve all children with disabilities.

USD #230 reported that it follows state and federal regulations regarding the implementation of IDEA. Students are identified as eligible to receive special education services based on multiple categories of exceptionality and receive services based upon their individual needs as determined by each student's IEP team. During the past 12 months, USD #230 reported ISKS and KSVA has identified and served students with

disabilities who are eligible for special education and related services in ten of the 15 categories of exceptionality recognized in Kansas.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the complainant and LEA staff in USD #230.

The KSDE recognizes 15 categories of exceptionality for eligibility to receive special education and related services. There are 14 categories of eligibility to be identified as a student with a disability. In addition, students who meet the eligibility criteria to be identified as gifted are also eligible to receive special education and related services through an IEP.

Office of Special Education Programs (OSEP) requires every school district to provide a child count on December 1st of each school year to its State's education authority documenting a variety of data regarding the students with disabilities served in that school district. Each State then tabulates this data from every school district and is required to provide a child count as of December 1st each school year that provides this same variety of data regarding the students with disabilities served in that State to OSEP to demonstrate compliance with the IDEA. One piece of data collected and reported in the December 1st Child Count is the number of students eligible for each of the 14 categories of disability.

The December 1st Child Count for the virtual school program run by USD #230 during the 2020-21 school year shows a total of 168 students who were identified as eligible to receive special education and related services under nine of the 14 disability categories: (1) autism, (2) developmental delay, (3) emotional disturbance, (4) intellectual disability, (5) orthopedic impairment, (6) hearing impairment, (7) other health impairment, (8) speech or language impairment, and (9) specific learning disability. In addition, USD #230 reported students were also identified as eligible to receive special education and related services under the exceptionality category of gifted.

The December 1st Child Count for the virtual school program run by USD #230 during the 2021-22 school year shows a total of 97 students who were identified as eligible to receive special education and related services under nine of the 14 categories of disability: (1) autism, (2) developmental delay, (3) emotional disturbance, (4) intellectual disability, (5) orthopedic impairment, (6) hearing impairment, (7) other health impairment, (8) speech or language impairment, and (9) specific learning disability. In addition, USD #230 reported students were also identified as eligible to receive special education and related services under the exceptionality category of gifted.

USD #230 provided current enrollment data as well as the most recent evaluation report and IEP for at least one student who was found eligible under each the nine categories of disability represented in the December 1st Child Count Reports. In addition, USD #230 provided this same documentation for at least one student identified as eligible under the exceptionality category of gifted.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.111(c)(1) require each state education agency (SEA) to identify, locate, and evaluate all children with disabilities residing in the State and who may need special education and related services, regardless of where the child may live or attend school in the State or even if the child is advancing from grade to grade. Each state then requires every local education agency (LEA) within that State to identify, locate, and evaluate all children with disabilities enrolled within its boundaries, and who may need special education and related services.

Federal regulations implementing the IDEA at 34 C.F.R. 300.8 and state regulations at K.A.R. 91-40-1 (k) define the term "exceptional child" as any child identified with a disability or any child who is identified as gifted, and who needs special education and related services. Each exceptional child with a disability must have been evaluated in accordance with federal regulations implementing the IDEA at 34 C.F.R. 300.304 through 300.311 and be found to meet the eligibility criteria to be identified in at least one of the 14 categories of disability described in 300.8, which include: (1) autism, (2) deaf-blindness, (3) deafness, (4) emotional disturbance, (5) hearing impairment, (6)

intellectual disability, (7) multiple disabilities, (8) orthopedic impairment, (9) other health impairment, (10) specific learning disability, (11) speech or language impairment, (12) traumatic brain injury, (13) visual impairment, and (14) developmental delay.

In this case, the interviews and documentation showed that both ISKS and the KSVA have multiple students in grades kindergarten through twelfth grade who are eligible to receive special education and related services under the exceptionality categories of gifted and eight other disability categories in addition to the category of specific learning disability.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to identify, locate, and evaluate all children with disabilities enrolled within its boundaries, and who may need special education and related services.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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)

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #501
ON MAY 2, 2022

DATE OF REPORT: JUNE 1, 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on May 10 and 13, 2022. On May 12, 13, 20, and 23, 2022, the investigator spoke via telephone with Donna Whiteman, General Counsel for USD #501. On May 25, 2021, the investigator spoke by telephone with Duke Palmer, Educational Coordinator at the Juvenile Detention Center (JDC).

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

- IEP for the student dated February 5, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated February 5, 2021
- Notice of Meeting dated August 17, 2021
- IEP for the student dated August 17, 2021
- IEP amendment signed electronically by the parent on August 18, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated August 17, 2021
- Email exchange dated October 27, 2021 between the virtual school principal, the on-site JDC administrator, and the principal of the elementary virtual school

- Email dated November 1, 2021 from the principal of the elementary virtual school to the on-site JDC administrator and the virtual school principal
- Email dated November 1, 2021 from the on-site JDC administrator to the principal of the elementary virtual school
- Undated IEP amendment provided by the district
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated December 3, 2021
- IEP for the student dated January 19, 2022
- IEP for the student dated February 4, 2022
- IEP amendment dated February 15, 2022
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated February 15, 2022
- Online calendar for the district for the 2021-22 school year
- Email dated March 28, 2022 from the principal to the parent
- Email exchange dated March 29, 2022 between the principal and the parent
- Email dated March 30, 2022 from the principal to the parent
- Email dated March 31, 2022 from the principal to the parent
- Email dated April 1, 2022 from the principal to the parent
- Email dated April 3, 2022 from the parent to the principal
- Email dated April 4, 2022 from the principal to the parent
- Email dated April 5, 2022 from the principal to the parent
- Email dated April 6, 2022 from the principal to the parent
- Email dated April 7, 2022 from the principal to the parent
- Email dated April 8, 2022 from the principal to the parent
- Email exchange dated April 11, 2022 between the principal and the parent
- Email dated April 13, 2022 from the principal to the parent
- Email exchange dated April 14, 2022 between the principal and the parent
- Email exchange dated April 18, 2022 between the principal and the parent
- Email exchange dated April 19, 2022 between the principal and the parent
- Email dated April 20, 2022 from the principal to the parent
- Daily class reports from JDC paraeducator

- Proposed MOU between the district and the county juvenile detention center (JDC)
- Excerpts from JDC handbook
- Student's JDC history between June 14, 2021 and April 25, 2022
- Communication/Documentation provided by the district covering the period of October 18, 2021 through April 27, 2022 regarding the student
- Service summary covering the period of February 28 through April 22, 2022

Background Information

This investigation involves a 12-year-old girl who is enrolled in the fifth grade.

The student is adopted. By report of the parent, the student was the victim of profound abuse at an early age and did not receive any formal education until age nine when she came to live with her parents and entered second grade in another school district.

The parent states that during the three years that the student has lived in her current home, the student has spent a third of those years away, either because of hospitalizations, crisis placements, PRTF (psychiatric residential treatment facility) stays, or JDC detentions.

The student first enrolled in a neighborhood school in this district as a third grader in August of 2019. According to the parent, the public-school setting did not provide an optimal learning environment for the student. The parents made the decision to educate the student at home and enrolled her as a fourth grader in the district's virtual school program in October of 2020. The student continued her enrollment in the virtual school program for the current school year. Three siblings are also enrolled in the program.

The parent reports that the student's past experiences have resulted in social and emotional challenges. According to the parent, the student struggles with loss and can be emotionally labile. After an aggressive episode was observed by a neighbor and reported to authorities, the student was taken into custody and placed in the county juvenile detention center (JDC) in October of 2021. Two other JDC placements have occurred during the 2021-22 school year.

Since JDC first opened, the school district has provided educational services to students detained there. Included among the services provided by the district is the delivery of the special education support to students who have an IEP. The district and the JDC are currently in the process of formalizing an MOU regarding their working relationship for the 2022-23 school year and beyond.

The educational instruction at JDC is provided through an online platform called "Calvert/Edmentum" – the same platform used by the district's virtual school. The Edmentum Program – designed for middle and high school students – provides the main educational program at JDC. Calvert is the elementary component of the Edmentum Program. Under this platform, students work through the curriculum at their own pace.

Issue

In her complaint, the parent identified a number of concerns regarding the overall education program at the JDC. However, the investigator only has authority to investigate issues related to the provision of special education services. Therefore, this report addresses only the following issue:

> While in the custody of the Shawnee County Juvenile Detention Center (JDC) the student was not allowed access to the special education services specified in her IEP.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

The local school district is required to provide FAPE to each student with a disability detained or incarcerated in a local juvenile or adult detention facility located within its jurisdiction in conformity with that student's IEP. The requirements concerning placement and LRE (least restrictive environment) may be modified in accordance with the student's detention or incarceration.

If a student is in a juvenile correctional facility, the Secretary of Corrections (Kansas Department of Corrections (DOC)) is obligated to make FAPE available according to an IEP that meets the requirements of federal and state statutes and regulations for each student with a disability. (See K.A.R. 91-40-5(a) and (b)).

Parent's Position

The parent asserts that she was informed by the principal of the JDC school program that the student's Zoom-based special education services could not be accommodated during all or part of three detentions at the facility which occurred during the 2021-22 school year. The parent contends that the student was not consistently provided with special education instruction in the area of math nor was she allowed the additional academic and/or social and emotional support called for in her IEP.

District's Position

It is the position of the district that district staff have worked diligently to meet the student's educational needs and address the parent's concerns.

Investigative Findings

An annual review of the student's IEP was conducted on February 4, 2021. At the time of the review, the student was transitioning from her neighborhood brick and mortar school to the district's virtual school. According to the "IEP Team Considerations" section of the IEP, the student would continue to receive 30 minutes of math support, five days each week "via Zoom."

The parents were provided written notice of the district's proposal to "discontinue pull out services listed on the IEP as the student is attending virtual school platform and offer to provide 30 minutes study skills support 5x per week for math/reading or social emotional support."

In addition to a math-related goal, the student's February 2021 IEP contained one goal related to the student's social/emotional needs:

> "By the end of the IEP year, when experiencing potentially upsetting events, [the student] will be able to utilize self-calming strategies (breathing techniques, problem solving, calm down area or break) 4 out of 5 times observed."

The goal was to be monitored by the student's special education teacher from the virtual school.
The student's February 5, 2021 IEP noted that the student was "not eligible" for extended school year (ESY) services.

The student was placed in the Juvenile Detention Center on two occasions during the Summer of 2021,

- June 14 – June 22, 2021 (8 calendar days, 0 school days); and
- July 20 – July 21, 2021 (1 calendar day, 0 school days).

The student's IEP team met again on August 17, 2021 and revised her IEP.

An IEP amendment statement signed by the parent on August 18, 2021 and signed by the special education teacher on August 19, 2021 specified changes to the student's special education services. The proposed amendment would represent "current service minutes in the virtual school program." The student was to receive "30 minutes of intervention and an additional *60* minutes of educational support each day school is in session."

A prior written notice document dated August 17, 2021, proposed a different level of services. The district provided notice that pull out services of 30 minutes of math support would be continued. Additionally, the district proposed *15* (not 60) minutes a day of study skills support 5x per week for math/reading or social emotional support." The parent gave written consent for this proposed changes on August 18, 2021.

In a telephone call with the investigator on May 10, 2022, the parent stated that it was her understanding that the student would receive a total of 45 minutes of support per day.

The parent's complaint is focused on three JDC placements that occurred after the August 18, 2021 IEP revision,

- October 23 – November 9, 2021 (17 calendar days, 12 school days);
- November 19 – December 15, 2021 (26 calendar days, 16 school days); and
- February 9 – April 25, 2022 (75 calendar days, 44 school days).

October 23 – November 9, 2021 (12 school days):

The parent contacted the principal of the virtual elementary school on October 25, 2021 to let her know that the student would be in JDC custody until at least November 9, 2021. The principal stated that she would "visit with the JDC virtual principal to ensure [the student] is connected with their program in the meantime."

On October 27, 2021, the principal contacted the parent to report that she had spoken with the Avondale principal who was also responsible for the school program at JDC. The principal reported that the student was in a 7 to 10-day COVID-related quarantine implemented whenever a student enters JDC. According to the principal, JDC did not have the technology available to allow internet access for the student while she quarantined, but if the student was to remain at JDC for more than two weeks, then arrangements would be made for the student to access the Calvert/Edmentum platform used by the virtual school, and the principal would advocate for the student to have Zoom sessions with the 5th grade teacher.

On October 27, 2021, the principal of the virtual school contacted the Avondale principal and the JDC on-site administrator/education coordinator to see if arrangements could be made to allow the student access to the "conference room attached to the mod [for her Zoom math sessions]" pending her anticipated release from quarantine.

On November 1, 2021, the principal of the elementary virtual school sent an email to the JDC education coordinator and the Avondale principal with Zoom link information for the student and subsequently confirmed that JDC was "ready for [the student] when she is able to take the classes."

The student was released from quarantine on November 2, 2021 and was eligible for school the next day. No evidence was provided by the district to indicate that, during the 12 school days between October 23 and November 9, 2021, the student was provided any of the 540 minutes of special education services (12 school days x 45 minutes per day of services) required by her August 17, 2021 IEP.

<u>November 19 – December 15, 2021 (16 school days):</u>

The principal of the elementary virtual school spoke with the parent on November 22, 2021, one school day after the student had returned to JDC for the second time during the 2021-22 school year. The principal told the parent that she would "reach out to JDC today and ensure she is set up again for education in Calvert."

The student had again been placed in COVID quarantine as was the JDC practice at that time. The quarantine period lasted from November 22 through November 30, 2021. The principal told the parent that she had "tried to get her a device during quarantine but unfortunately they [JDC] do not allow."

On December 3, 2021, the district proposed an amendment to the student's IEP to address the parent's concern that the student was not receiving Zoom-based special education services.

According to the December 3, 2021 amendment,

> "While in [JDC, the student's] IEP will need to be amended to reflect the current special education services that are available while housed at [JDC]...As the environment at the jail is restrictive in nature, due to the policies and regulations that are implemented to provide a safe environment for the staff and inmates. In cooperation with the [JDC] staff, curriculum will be adjusted within the confines of the current internet access and what is made available to inmates with an exceptionality as identified by their IEP...[The student] will receive instruction, assistance, and consultation through Zoom and those special education minutes are outlined below.
>
> When [the student] attended [the virtual school] she received the following accommodations and minutes:
>
> Separate seating for state and district testing
>
> In an "A" setting, [the student] would receive 45 minutes, 4 days per week, on a weekly basis special education minutes.
>
> While housed at [JDC, the student] will receive special education minutes in an "I setting" incarcerated for 30 minutes, 5 days per week, every week. As the nature of an incarcerated facility, if [JDC] is short staffed due to illness, COVID-19 or any other issue that would affect safety of the inmates/staff, the number of days may be modified on a short-term basis. This would be the exception rather than the rule.
>
> This amendment will end upon [the student's] release from [JDC]."

On December 3, 2021, the district provided the parents with prior written notice of a "material change in services" (greater than 25%) for the student, reducing special education services from a total of 45 minutes per day to 30 minutes per day. The parents did not provide written consent for this change.

The district asserts that, despite having provided the parent with prior written notice of a material change in services, the student's services were in fact reduced by less than 25% since the student was receiving 180 minutes per week of service in the "A" setting and the district's new proposal only reduced service to 150 minutes per week. However, no evidence was provided by the district to show that services had been changed from 45 minutes, five times per week (as specified in the August 17, 2021 IEP), to 45 minutes, four times per week.

Evidence provided by the district indicates that the student was first allowed to engage in Zoom math sessions with the special education teacher from the virtual school on December 13, 2021. In total, 90 of the 720 minutes of special education services (45 minutes for 16 school days) required by the student's August 17, 2021 IEP were provided. The services that were provided were for math. No evidence was provided by the district to show that, at any time during the student's second detention of the school year, she was allowed the additional 15 minutes a day of study skills support 5x per week for math/reading or social emotional support.

<u>February 9 – April 25, 2022</u>

The district scheduled an annual review of the student's IEP on January 19, 2022. According to the "IEP Team Considerations" section of the IEP, the parent did not "want any further mental health support for [the student]. Her schedule is currently full of services at this time." No social emotional goal was included in the IEP.

According to a prior written notice form which was sent electronically to the parent on January 19, 2022, the district proposed that the student would – when enrolled in the virtual school – receive

> "optional office hours [with the special education team] that are available to the student if needed. These services will be offered 5 days per week for 15 minutes and will be available via virtual format. It is proposed that [the student] receive 30 minutes of direct intensive academic intervention services each day for Math in a virtual setting."

According to the prior notice form, the district's proposal represented a "material change in services" as well as a "substantial change in placement."

The "General Education/Least Restrictive Environment" section of the January 2022 IEP includes the following statement:

> "[The student] will receive direct intensive academic intervention services for 30 minutes a day in math. She will also receive indirect services for inclusion support in the form of office hours for 15 minutes a week."

The parent did not consent to the district's proposed changes until February 4, 2022 when the IEP was amended yet again. The "Social Emotional" section of the February 4, 2022 IEP shows that the IEP team no longer felt that the student had social emotional needs that required special education or related services. The IEP includes the following statement:

> "[The student] is already assigned to many mental health services. No new services are requested by Mom."

The student was again placed in the JDC custody on February 9, 2022. Once again, her detention began with a 10-day COVID-related quarantine.

On February 15, 2022, the student's IEP was amended yet again. The IEP team determined that the student should receive 30 minutes of special education services, 5 days a week. Additionally, the student was to receive "Social Work services" for 20 minutes once every four weeks. The district provided the parent with prior written notice of proposed changes to the student's IEP on February 15, 2022 and the parent electronically provided her written consent for the action on that same date.

On February 15, 2022, the elementary virtual school principal spoke with the parent about the student's IEP and notified her that sessions with the special education teacher were to begin on February 21, 2022, the first school day after the quarantine period was completed.

Records provided by the district show that a total of 14 days of special education math support was provided for the student during this JDC detention period. Sessions varied in length. In total, 487 minutes of services were delivered.

No special education services were provided to the student on February 21, 2022. According to a service log provided by the district, the student first participated in a Zoom session on March 7, 2022 and then attended sessions on March 8 and 9, 2022 for a total of 87 minutes. Two "snow days" followed when no services were provided.

An email exchange between the parent and the JDC administrator dated March 11, 2022 indicates that Zoom special education math sessions would be conducted during the student's 4th period math class beginning on March 22, 2022, after Spring Break (March 14-21, 2022).

The student participated in daily math Zooms on March 22 and 23 as well as March 25, 28, and 30, 2022. No math Zoom was conducted on March 29 and 30 because of state and district testing.

Zoom math sessions resumed on April 1, 2022 and were available to the student for every school day until April 12, 2022 when staff was once again unavailable because of testing as they were on April 14, 2022. The student participated in 2 of the 4 sessions that were available to her between April 18 and 22, 2022.

The special education teacher from the virtual school offered office hours from 2:30 to 3:30 PM each day as a time he could provide additional support to the student, but there is no record to show that the student took advantage of that opportunity.

According to the social worker, she began seeing the student daily for a "check-in" period of 15 minutes starting on February 22, 2022 and saw the student for over 75% of the school days the student was in detention. The social worker also conducted two other targeted sessions with the student – one on February 25, 2022 and a second on April 5, 2022.

On April 6, 2022, the parent met with the assistant superintendent and other administrators responsible for the JDC school program. Among the topics discussed was the option of providing additional support for the student from the classroom teacher or special education teacher during school day afternoons. Records show that the 5th grade teacher from the virtual school conducted a Zoom tutoring session with the student on April 18, 2022. Records provided by the district also show that Zoom-based tutoring sessions with the 5th grade teacher were conducted on April 19 and 20, 2022.

According to JDC disciplinary practices, teachers may assign a student a "time out" – a temporary return to the mod (a section of the facility where students are grouped by age and gender) followed by a return to class. Usually, when an officer takes a student back to their mod for refusing to work or to come to class, the student remains in the mod. The amount of time the student remains in the mod may vary depending on the offense that led to the return to the mod.

The student missed some or all of her classes on the following dates and was not available for her special education math support:

- March 28, 2022: The student was returned to her mod by the officer from 10:26 AM until 1:00 PM for refusal to do work.
- April 8, 2022: Timed out for 30 minutes for refusing to work. After 30 minutes, the student continued to refuse to work. She remained in her mod until the end of the school day. The student did not participate in any Zoom session.
- April 11, 2022: The student complained of being tired. Multiple attempts were made to wake her up in class. She was returned to the mod and remained there until the end of the day for refusing school. No Zoom sessions were conducted.
- April 13, 2022: The student was "written up" after she refused school. She was out of class for one hour and four minutes, missing her math Zoom time. She returned to class at 12:35 PM and had a second Zoom session during the last period of the day.
- April 18, 2022: The student was sent back to the mod at 8:50 AM for refusing to do school work. The student was back in class at 12:30 PM but had already missed her Zoom math period. The student did have her afternoon Zoom session.
- April 20, 2022: The student refused school and complained of not feeling well.

Because of testing, staff was unavailable to facilitate the provision of the student's special education services on 6 days during this period of incarceration.

In total, 487 of the 1,020 minutes (34 days at 30 minutes per day) of special education math support required by the February 15, 2022 amendment of the student's IEP was provided.

Summary and Conclusions

During each of the student's JDC incarcerations during the 2021-22 school year, the unavailability of technology kept the student from receiving any special education services while she was completing an initial-entry, COVID-related quarantine period imposed by the JDC.

No evidence was provided by the district to show that any of the 540 minutes of special education services required by the student's August 17, 2021 IEP were provided during the student's first incarceration of the 2021-22 school year. During the student's second incarceration, the district failed to provide 630 minutes of special education services as required by the student's August 17, 2021 IEP – the last agreed upon IEP prior to the student's November 19, 2021 detention at JDC.

The student's February 15, 2022 IEP did not require the provision of any special education services beyond special education math support and social work support during the student's third incarceration of the 2021-22 school year. There were 42 school days during the period of February 9 through April 25, 2022. The student was unavailable for six of these days. A total of 487 minutes of special education math support (of the 1,020 minutes required by the student's IEP) was provided over 20 days during this period (a deficit of 533 minutes from requirements established by the student's February 15, 2022 IEP). All social work support required by the February 15, 2022 IEP was provided. The February 15, 2022 IEP did not require any additional special education tutorial or social emotional support.

In total, the district failed to provide a total of 1,703 minutes (28.4 hours) of special education services to the student as required by her IEP over the three periods the student was incarcerated at JDC during the 2021-22 school year. A violation of special education statutes and regulations is established on the single applicable issue raised by the parent in her complaint.

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 occurred with regard to 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) which require that the district provide a FAPE to students by implementing their IEPs as written.

Therefore, USD #501 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written.

2) No later than 40 days after the date of this complaint, USD #501 shall submit to SETS for review and approval a plan for the delivery of 1,703 minutes of compensatory special education services to this student.

    a) Within 10 school days of the date the plan for compensatory services has been approved by SETS, the district shall present the plan to the parent who will have the option of either accepting the plan as written, or accepting a portion of the plan, or rejecting it.

    b) Within 5 school days of the date the plan is presented to the parent, the parents must notify USD #501 of their decision to accept or reject the plan.

    c) Within 5 school days of receiving the parents' decision, USD #501 must notify SETS of that decision.

3) No later than 60 days after the date of this complaint, USD #501 shall submit to SETS verification that the technology necessary for students with an IEP to access online educational opportunities and services specified in their IEP and while detained in assigned mods at JDC has been installed and is operational.

4) Further, USD #501 shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.
For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.



Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.
Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;
(B) the withholding of state or federal funds otherwise available to the agency;
(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #233

ON APRIL 25, 2022

DATE OF REPORT MAY 25, 2022

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

The complaint is against USD #233 (Olathe Public Schools) who provide special education and related services to students in their district. In the remainder of the report, "USD #233," "Olathe Public Schools," the "school," the "district" or the "local education agency (LEA)" shall refer to this responsible agency.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on April 25, 2022 and the 30-day timeline ends on May 25, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, initially interviewed the mother by telephone on April 27, 2022. Additionally, the Complaint Investigator exchanged emails with and interviewed the mother between April 27, 2022 - May 6, 2022.

USD #233 made the following school staff available for a conference call interview with the Complaint Investigators on May 17, 2022:

- Deb Chappell, Assistant Director of Special Services, USD #233
- Mariah Sweeney, Resource Teacher/Case Manager, Tomahawk Elementary, USD #233
- Julia, Baucum, Principal, Tomahawk Elementary, USD #233

The Complaint Investigator also exchanged emails with Ms. Chappell between May 1, through May 17, 2022 to gather additional information and to clarify documentation provided by the LEA.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. While all materials submitted were carefully read the following materials were not used in consideration of the issue. They include:

- Third grade Newsletters for the 2021-2022 school year
- Speech Language Provider Service Log dated August 20 through May 3, 2022; Service Report, dated May 2 and 3, 2022; and Accident Investigation Report and Eyewitness Statement, dated August 31, 2021
- Tomahawk Elementary School, Incident Reports from August 31, 2021 through April 13, 2022
- Correspondence between the parent and third grade classroom teacher, dated September 7, 2021 through May 1, 2022
- Evaluation Report dated January 25, 2021
- Prior Written Notice (PWN) for identification of Initial Services, Placement, Change in Services, Change of Placement and Request for Consent, dated January 25, 2021

The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP), dated January 25, 2021
- Behavior Intervention Plan (BIP), dated January 25, 2021
- IEP Progress Report - Annual Goal, dated March 11, 2021

- Olathe student calendar for school year 2021-2022 showing student attendance and dates when 1) daily behavior sheet was not sent electronically to the family, 2) daily behavior sheet were not completed, 3) snow days, and 4) field trips
- Daily Behavior Logs, dated August 24, 2021 through May 3, 2022
- Email dated October 18, 2021 at 1:27 p.m. from Cassie Barnett, Behavior Coach, USD #233 to Mariah Sweeney, Resource Teacher/Case Manager, Tomahawk Elementary, USD #233
- IEP Progress Report - Annual Goal, dated December 5, 2021
- IEP, dated December 6, 2021
- BIP, dated December 6, 2021
- SpEd and IEP Process/Procedures Handbook, Olathe Public Schools, USD #233, March 2022 version
- Email dated, April 18, 2022 at 12:43 p.m. written by Julia Baucum Principal, Tomahawk Elementary, USD #233 to the mother
- USD #233 Response to Allegations, dated May 11, 2022

Background Information

This investigation involves a 9-year-old female student who is currently enrolled in the third grade in USD #233, Olathe Public Schools at Tomahawk Elementary School. She receives special education and related services under the exceptionality category of autism. The student began attending Tomahawk Elementary School at the start of second grade. During second grade she was reevaluated by the district and an evaluation report was completed and presented on January 25, 2021 with a PWN dated January 25, 2021 changing her eligibility category from developmental disabilities to autism. She previously attended USD #512, Shawnee Mission Schools where she received special education and related services under the eligibility category of developmental disabilities. The student lives with her family.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised one issue that was investigated. A second issue was raised but does not fall under IDEA legislation. Resources were provided to the family for consideration.

> ISSUE ONE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide regular reports of progress as specified in the IEP during the 2021-22 school year, specifically, daily behavior sheets that represent the events of the school day.

Positions of the Parties

The mother alleged that daily behavior sheets, as specified in her daughter's IEP were not consistently sent home and did not accurately represent the events that occurred throughout the day. She stated that weeks' worth of daily behavior sheets were missing and that the data sheets received did not detail aggressive behavior and events that were reported in the school's incident reports.

USD #233 responds that the district is not legally required to provide daily behavior sheets or any other information on a daily basis to the parent. Not only is there no special education statute or regulation that requires schools to provide daily information to parents, but the student's IEP also does not require the school to provide daily information to the parent. Quarterly progress monitoring of the student's IEP goals was completed for the 2021-2022 school year in October of 2021, December of 2021, and March of 2022, with the last one to be completed at the end of the school year in May, 2022.

Although the position of the district is that the school is under no legal obligation to provide a daily behavior sheet to the parent, the district has documentation that a behavior sheet was emailed to the parent on all but 16 days this school year (August through April). On three of these days no daily sheet was completed. On thirteen of these days a data sheet was completed and may have been provided to the parent by other means (such as handed to parent directly, sent home with student, etc.) but the district has no documentation to verify this. Regardless, the parent could have requested these thirteen data sheets at any time and received them upon request.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #233.

- According to the SpEd and IEP Process/Procedures Handbook, Olathe Public Schools, USD #233, dated March 2022, "Reporting progress on IEP goals is required quarterly as well as at the annual review." The quarterly monitoring dates for the 2021-2022 school year were October 7, December 17, March 11, May 25, and Annual Review date.
- The student's IEP Progress Report - Annual Goal, dated January 5, 2021 reported the student's progress on each of her six goals on March 12, 2021, May 20, 2021, October 7, 2021, and December 5, 2021. Three goals also included progress reporting for extended school year on July 1, 2021.
- According to the January 25, 2021 IEP the behavior goal was to increase prosocial behaviors (safe body and following directions) to a prespecified percent each quarter. Further, "Progress Monitoring is completed on a quarterly basis and is available through ParentVUE."
- The Behavior Intervention Plan, dated January 25, 2021 stated that behavior data would be gathered daily, monitored weekly, and reported quarterly on the IEP behavior goal.
- Daily Behavior Logs prepared by the resource teacher and dated August 24, 2021 - May 3, 2022 showed emails to the mother with daily behavior logs attached on all but thirteen days that the student was in attendance. The teacher reported that she does not have documentation but believed she either sent a sheet home or handed it to the parent. No daily sheet was completed on three days the student was in attendance.
- The IEP dated December 6, 2021 reported the use of daily behavior sheets for baseline data reporting.
- According to the December 6, 2021 IEP a behavior goal was to reduce the number of incidents of aggression (hitting, punching, slapping, kicking, pulling jewelry, pulling hair) during a 5-day period. Teacher observation and a daily behavior sheet were to be gathered daily, monitored weekly, and reported quarterly on the IEP behavior goal. Finally, the IEP states, "Progress Monitoring is completed on a quarterly basis and is available through ParentVUE."

- The student's IEP Progress Report - Annual Goal, dated March 11, 2022 showed progress reported by each of five goals on March 11, 2022.
- Incident reports for the following dates (August 31, 2021; September 28, 20, 2021; October 4, 7, 21, 22, 25, 2021; November 11, 15, 2021; February 8, 2022; March 28, 2022; April 5, 6, 2022) showed corresponding behavior data described by frequency, time of day(duration) with a general description of behavior.
- Ms. Sweeney, Ms. Baucum, and Ms. Chappell reported during the district interview on May 17, 2022 that the daily behavior sheet was the data collection tool to determine progress on the specific behavior goal. The goal was to reduce frequency and duration while increasing prosocial behavior. They stated the daily behavior sheet was not designed as a mechanism for reporting incidents of behavior to parents. They stated the district incident reports were meant to be more descriptive of the behavior. They further stated that incident reports were district wide and reflected the student code of conduct. The incident report may or may not be inclusive of any student behavior described in an IEP.
- Ms. Sweeney reported during the interview on May 17, 2022 that the Think Sheets were a worksheet for the student recommended by the Behavior Coach to complete after a behavioral incident for the student to review behavior and plan for alternative strategies.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at C.F.R., 300.320 (a)(3) and K.S.A. 72-3429(c)(3) describe what an IEP must contain. In regards to providing progress to families the IEP must state, "How the child's progress toward meeting the annual goals will be measured" and "When periodic reports 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) will be provided;"

Chapter 4, Measuring and Reporting Progress on Annual Goals from the Kansas State Department of Education Kansas Special Education Process Handbook further reiterates and clarifies reporting of progress.

> Once the IEP team has developed measurable annual goals for a child, the team must include a description of how the child's progress toward meeting the annual goals will be measured. This measure of progress will

> enable parents, children, and educators to monitor progress during the year, and, if appropriate, to revise the IEP to be consistent with the child's instructional needs. The idea is to use progress monitoring information in a formative way, to help with decision-making about instructional changes that may be needed. If a measurable annual goal is written correctly with the 4 components (behavior, criteria, condition and timeframe) the requirement of how progress toward the goal is measured is contained within the goal and no additional information is required.
>
> 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. 72-3429(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, 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 towards the child's measurable annual goals.

Accordingly, a provision in each of the two IEPs for the 2021-2022 school year states that Progress Monitoring is completed on a quarterly basis and is available through ParentVUE and further parents may request a hardcopy of progress monitoring from the student's case manager is consistent with federal and state law and district procedures.

Interviews with the #233 staff and review of the IEPs and Progress reports documented that the planned dates for quarterly progress monitoring were met.

Although the district was not obligated, emails provided by the resource teacher showed that all but thirteen of daily data sheets for the 2021-2022 school year were distributed to parents by sending home to the student, emailing to both parents, and handing directly to the parents.

A review of the district's Incident Reports and daily data sheets showed that the reports of behaviors corresponded in both.

Based on the foregoing, the allegation that USD #233 failed to provide the family with regular reports of progress, specifically daily behavior sheets during the 2021-2022 school year was not substantiated.

A. Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Donna Wickham

Donna Wickham, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290
ON APRIL 19, 2022

DATE OF REPORT: MAY 17, 2022

This report is in response to a complaint filed with our office by_____, on behalf of her son, _____. For the remainder of this report, _____ will be referred to as "the student." Ms. _____ will be referred to as "the student's mother," "the complainant," or "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on May 13, 2022. On April 26, May 11, and May 13, 2022, the investigator spoke by telephone with Dr. Joshua Robinson, Assistant Superintendent/Director of Special Education for the district.

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

- Notice of Meeting dated April 15, 2021
- Team Evaluation Eligibility/Identification Report dated May 18, 2021
- Staffing Record dated May 18, 2021
- Power Point slides provided by the district
- Audio recording of the May 18, 2021 evaluation/eligibility meeting

Background Information

This investigation involves a ten-year-old boy who is enrolled in the fourth grade in his neighborhood school. The student was diagnosed by Children's Mercy Hospital with Tourette Syndrome at the end of Kindergarten after having initially been determined to have a transient tic. Diagnoses of Anxiety, Attention Deficit Hyperactivity Disorder (ADHD), and Developmental Dyslexia were subsequently identified. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

The student has been determined to be eligible for and in need of special education services under the category of Specific Learning Disabilities.

Issues

In her written complaint, the parent presented three issues.

Issue One: The district did not properly notify the parents who would be attending an eligibility team meeting.

Applicable Statutes and Regulations

At K.A.R. 91-40-51(b)(1), Kansas regulations 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." In this issue, the parent alleges a violation with regard to the notice of a May 18, 2021 meeting which was mailed to the parent on April 15, 2021, more than one year before this complaint was received by KSDE (Kansas State Department of Education). The parent signed the notice form on April 19, 2021. This complaint was received on April 19, 2022, one year and one day after the parent signed the notice.

While it could be argued that the parent was not aware of this alleged violation until May 18, 2021 when she attended the evaluation/eligibility meeting, the language of the regulation speaks to when the violation occurred, not "when one becomes aware of a violation." The alleged violation regarding the meeting notice occurred more than one year prior to the parent's filing of this formal complaint. Therefore, this issue was not investigated.

Issue Two: The parents did not provide a written excusal allowing the Director of Special Education to leave an eligibility team meeting.

Applicable Statutes and Regulations

The members of the evaluation team for a student are the same as those who would serve on the child's IEP team (should the child be found eligible). At K.S.A. 72-3404(u), Kansas statutes specify the required members of the IEP team for a student who is under age 14. Those participants include the following:

1. The parents of the child;

2. at least one regular education teacher of the child, if the child is, or may be participating in the regular education environment;
3. at least one special education teacher or, where appropriate, at least one special education provider of the child;
4. a representative of the agency directly involved in providing educational services for the child who:
    - is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children;
    - is knowledgeable about the general curriculum; and
    - is knowledgeable about the availability of resources of the agency; and
5. an individual who can interpret the instructional implications of evaluation results.

If a child is suspected of having a specific learning disability, the evaluation team should include at least one person qualified to conduct individual diagnostic examinations of children, including a school psychologist, a speech/language pathologist, or a remedial reading teacher (K.A.R. 91-40-11(a)(2)).

At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate may also be a part of the evaluation team.

There is no specific requirement in special education statutes and regulations for the written excusal of an ***evaluation team member*** from ***an evaluation/eligibility meeting***. A required member of a child's ***IEP*** team is not required to attend ***an IEP team meeting***, in whole or in part, if the parent of a child with an exceptionality and the school agree, in writing, that the attendance of the IEP team 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 required member of the ***IEP team*** may be excused from attending an IEP team 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 school consent to the excusal; and
- The IEP team member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting (K.S.A. 72-3429(b)(2), (3); 34 C.F.R. 300.321(e)).

Excusals through written agreement or consent apply ***only*** to the required ***IEP team members.*** Other members of the team, who have been invited by the school district or the parent, may be excused from attending the meeting without agreement or consent. If an individual that is not a required IEP team member, as described above, is invited to attend a meeting, and is included on the notice of meeting, it is not required for the parent and school to consent and/or provide written agreement to excuse those individuals because they are not required members of an IEP team (Federal Register, August 14, 2006, p. 46675).

Parent's Position

The parent asserts that the Assistant Superintendent/Director of Special Education left prior to the end of an eligibility team meeting without first obtaining the written consent of the parents.

District's Position

Because the role of LEA representative for the May 18, 2021 evaluation/eligibility team meeting was being filled by other individuals, there was no need for the district to obtain the written consent of the parent when the director of special education left the meeting at the request of the parent.

Investigative Findings

The director of special education was not filling the role of LEA representative at the May 18, 2021 evaluation/eligibility meeting. As will be explained below in Issue Three, that role was filled by two other individuals.

Approximately two hours into an audio recording of the May 18, 2021 evaluation/ eligibility meeting, the parent can be heard stating that she believes the director of special education was present at the meeting "to prevent my son from receiving the services that are due to him." The director of special education is heard to say that in an effort to keep the meeting focused, he is "happy to step out." The parent responds, "I think you should…you offered to step out and I think you should." The director then left the meeting.

Summary and Conclusions

The director of special education was not filling a required role at the evaluation/eligibility team meeting on May 18, 2021. Therefore, the director's departure from the meeting at the request of the parent did not require the written consent of either the parent or the district. A violation of special education statutes and regulations is ***not*** substantiated on this issue.

Additional Comments

When presenting facts related to this issue, the parent referenced "evidence of predetermination" of eligibility. The issue of predetermination was taken up in a previous complaint (22FC290-002). A violation of special education statutes and regulations was not established as a result of that complaint. The issue was, therefore, not investigated in conjunction with this complaint.

Issue Three: Two individuals assumed the role of LEA (local education agency) representative during the same eligibility team meeting.

Applicable Statutes and Regulations

The law allows for individuals to represent more than one of the membership roles on the IEP (and, therefore, evaluation) team. Additionally, all of the requirements for one of the team roles do not have to be filled by one person; multiple members of the school team may meet one or any of these requirements. Individuals assuming more than one role at an IEP team meeting should document their roles within whatever attendance record is used during the meeting.

Parent's Position

The parent asserts that the principal and the school psychologist signed the evaluation/eligibility report as the LEA representative.

District's Position

The district stipulates that both the building principal and the school psychologist signed as LEA representatives.

Investigative Findings and Conclusions

Two participants at the May 18, 2021 evaluation/eligibility team meeting – the building principal and the school psychologist – signed the team report indicating that they

were filling the role of LEA representative. Special education statutes and regulations do not prohibit the filling of a required role by multiple members of the team. A violation of special education statutes and regulations is ***not*** established on this issue.

Corrective Action

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

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.
For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed

unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2).

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #203
ON APRIL 17, 2022

DATE OF REPORT: MAY 17, 2022

This report is in response to a complaint filed with our office by ___(___) and _____ _____, on behalf of their daughter,_____. For the remainder of this report, _____ will be referred to as "the student." Mr. and Mrs. _____ will be referred to as "the parents." Mr. _____ will be referred to as "the student's father." Mrs. _____ will be referred to as "the student's mother."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the student's mother on May 6, 2022. On April 25 and May 12, 2022, the investigator spoke via telephone with Dr. Ja'Kyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative. On May 9, 2022, the investigator spoke via conference call with Dr. Lawrie and Rebecca Lambert, special education coordinator. The investigator spoke again by telephone with the coordinator on May 11, 2022.

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

- IEP Progress Reports for the student for school year 2019-20
- Email exchange between the parent and the coordinator dated September 13, 2021
- Email dated September 15, 2021 from the director of special education to the student's mother
- Email dated October 28, 2021 from the special education teacher to the student's mother
- IEP for the student dated November 3, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 3, 2021

- Email dated November 9, 2021 from the student's mother to the coordinator
- Email dated November 10, 2021 from the director of special education to the student's mother
- Email dated November 30, 2021 from the coordinator to the student's mother
- Email dated December 1, 2021 from the director of special education to the student's mother
- Meeting Summary dated January 12, 2022
- IEP Amendment Between Annual IEP Meetings dated January 26, 2022
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 26, 2022
- Behavior Data Sheet dated March 30, 2022
- Email dated April 12, 2022 from the student's mother to the coordinator
- Email exchange dated April 13, 2022 between the student's mother and the coordinator
- Excerpted entries from home/school communication provided by the parents
- Random sampling of Daily Communication Logs provided by the district
- Attendance record for the student for school years 2019-20, 2020-21, and 2021-22
- Progress Notes for the 2020-21 school year
- Additional Service Log for the student
- Home/school communication log excepts covering the period of November 3 – December 1, 2021

Background Information

This investigation involves a 21-year-old girl who is enrolled in the district's program for students ages 18 to 21. The student is nonverbal. She has multiple diagnoses including epilepsy, cerebral palsy, Autism, hydrocephalus with a working shunt, failure to thrive, MTHFR (Methylenetetrahydrofolate reductase) dystonia, PTSD, and gastric reflux. She has an oral fixation and frequently places items in her mouth.

The student meets eligibility criteria to receive special education services under the category of Multiple Disabilities as well as Speech Language Disabilities. She requires full adult assistance to navigate through and participate in most activities throughout the school day. She is supported by a 1:1 nurse as well as a 1:1 paraeducator. The student receives Occupational and Physical Therapy, Adapted PE, Vision services,

Speech/Language therapy, Music Therapy and transition services in addition to special education classroom services.

Issues

In their complaint, the parents identify six concerns.

Issue One: The district has failed to provide the Community Based Instruction (CBI) specified in the student's IEP.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Parents' Position

The parents assert that, for the period of March 30 through April 1, 2022, the district did not provide the student with CBI because of staff absences.

District's Position

The district stipulates that staff absences during this period kept the student from participating in some of her CBI opportunities.

Investigative Findings

According to her November 3, 2021 IEP, the student is to participate in two 90-minute CBI opportunities per week. Additionally, the student was to participate in 60 minutes of CBI activities in a community-based volunteer setting.

The student's November 3, 2021 IEP states that she is to be provided with both attendant care support and school nurse services throughout her school day. The student's November 2021 IEP also states that the student is to be provided with a total

of 240 minutes of CBI (community based instruction) opportunities per week. These opportunities are provided to the student on Wednesdays, Thursdays, and Fridays. A 1:1 nurse and a 1:1 paraeducator must accompany the student for her CBI trips.

The 1:1 nurse assigned to work with the student was unexpectedly hospitalized and was absent from work during the period of March 30, 2022 through April 1, 2022. While the school nurse assigned to the building was able to fill in and provide nursing services to the student when the student was in the building, she could not leave the building to accompany the student for CBI outings.

The student's Wednesday CBI outings are generally scheduled to occur from 9:00 to 11:00 AM. According to an email to the coordinator on April 12, 2022, the parent states that she picked the student up from school at 9:52 AM on Wednesday, March 30, 2022 to go to a doctor's appointment. The email states that the student was returned to school at 11:42 AM.

According to the Additional Services Log provided by the district, a total of 285 minutes of CBI services were provided to the student during the week of April 4, 2022. For the week of April 18, 2022, a total of 285 minutes of CBI services were provided. A total of 320 minutes of CBI services were provided to the student during the week of April 15. Over these three weeks, then, a total of 170 minutes of CBI services were provided beyond the 240-minutes per week required by the student's November 2021 and January 2022 IEPs.

Summary and Conclusions

From March 30 through April 1, 2022, the student was to receive a minimum of 240 minutes of CBI services. Because her 1:1 school nurse was absent, the student was not able to participate in 90 minutes of CBI activities on either March 31 or April 1, 2022. The nurse's absence also kept the student from participating in 52 minutes of CBI activities on March 30, 2022 (the time between the 9:00 AM scheduled start of CBI services and the student's 9:52 AM departure for a doctor's appointment). In total, the student was not provided with 232 of the required 240 minutes of CBI services.

Because the student was not provided with 232 minutes of CBI services specified in her November 3, 2021 and January 26, 2021 IEPs due to the absence of district staff, a violation of special education statutes and regulations ***is*** established on this issue.

However, over the ensuing four weeks since April 1, 2022, the district has provided an excess of 170 minutes of CBI services to the student beyond the minutes required by her IEP. Therefore, as of May 5, 2022, the district had made up all but 62 minutes of the services that were missed during the week of March 28, 2022.

Issue Two: The district continued to implement an expired IEP after a new IEP had been developed.

Applicable Statutes and Regulations

As stated above under Issue One, a district must implement a student's IEP as written.

Parents' Position

It is the position of the parents that the district failed to provide services to the student as specified in her November 3, 2021 IEP and instead continued to deliver services as they were outlined in her November 2019 IEP.

District's Position

The district states that the staff members working with the student were made aware of her updated goals.

Investigative Findings

The student's IEP was reviewed and revised on November 3, 2021. At the time of the revision, changes were made to the student's annual goals. According to the home/school communication log shared between the parents and the school, staff continued to work on the annual goals established in the student's November 2019 IEP on November 4, 5, and 9, 2021.

On November 9, 2021, the student's mother sent an email to the special education coordinator, copying the director of special education, asking "which IEP is the school district working off of?". On November 11, 2021, the director responded via email stating that staff was using "the current IEP that was reviewed and developed on 11/3/21 and sent home on 11/5/21".

The home/school communication log shows that on November 10, 2021, staff was still working on goals established in the November 2019 IEP and continued to do so on

November 10-12, 2021. The student was then absent until November 29, 2021. According to the home/school communication log, staff continued to work with the student on goals from the November 2019 IEP on both November 29 and 30, 2021.

In an email to the director of special education dated November 30, 2021, the student's mother again asks, "What IEP goals is (sic) is staff working with [the student] since the IEP took effect on November 5th?"

On December 1, 2021, the coordinator sent an email to the parents. In that message the coordinator stated that "staff are aware to now be addressing the IEP goals from the recent IEP. That message has been relayed to all staff that work with [the student]."

Summary and Conclusions

The home/school communication log for the student shows that between November 3, 2021 (when the student's November 2019 IEP was reviewed and revised) and December 1, 2021, staff continued to work with the student on goals established in the November 2019 IEP rather than implementing the November 3, 2021 IEP. Since school staff failed to implement the student's current IEP as written, a violation of special education statutes and regulations ***is*** substantiated on this issue.

Issue Three: The district removed the parent/teacher communication book from the student's IEP without first providing the parents with prior written notice and obtaining the parent's consent.

Applicable Statutes and Regulations

A district must obtain the informed written consent of the parents before making a substantial change in placement (more than 25% of the child's school day) or a material change in services (25% or more of the frequency or duration of any one service). (See K.S.A. 72-3430(b)(6) and K.A.R. 91-40-27(a)(3).) A change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, ***is not*** a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services.

Parents' Position

It is the position of the parents that, without first obtaining parent consent, the district made a change in the home/school communication system that had been in place for many years, dropping the binder notebook which provided the parents with specific information regarding the student's day in favor of a one-page sheet which does not supply the level of detail the parents want.

District's Position

It is the position of the district that while the format of the home/school communication system has changed, the district continues to provide the parent with daily communication about the student.

Investigative Findings

According to the parents' complaint, the student has had a Parent/Teacher communication book in her IEP since she first began receiving early childhood services as a 3-year-old.

The "Program Modifications, Accommodations, and Supplementary Aids and Services" section of the student's November 3, 2021 IEP contains the following statement:

> "Daily communication book with log of activities sent home daily. Information about:
> 1. progress on IEP goals
> 2. academic activities
> 3. therapy activities
> 4. walking
> 5. any accidents
> 6. [the student's] response to the activities"

According to the IEP, the staff would continue "summarizing each activity throughout the day until the activity is over and the notation is complete."

An IEP team meeting was held on January 12, 2022. According to the "Meeting Summary," the purpose of the meeting was "to discuss the methodology of accommodations in the IEP."

In addition to proposing changes to the student's behavior log, the district also proposed changes to the student's communication log. The special education teacher

presented a sample form to show the parents what the new formatting would look like. Rather than using a spiral notebook to exchange information, the district had developed a single page communication form.

The reporting of "accidents" would be moved from the communication log to the nurse's log which is sent home to the parents daily.

According to the "Meeting Summary," the parents proposed modifications to the form, adding a check box to address CBI at Heart to Heart International and the activities the student completed while there. The parents also wanted the form to include communication regarding the student's work on IEP goals and the level of support required. Additionally, the parents asked that the communication log include a notation regarding time the student spent each day walking and in her stander. These changes were incorporated into the communication form.

The student's IEP was modified to reflect the changes to the format of the communication log. The "Program Modifications, Accommodations, and Supplementary Aids and Services" section of the student's November 3, 2021 IEP was amended to read "Communication log to include a summary of student's day." The log would be completed every day the student was in attendance.

Summary and Conclusions

The district made changes to the design of the home/school communication log and to the description of that log in the student's IEP but did not remove the log from the student's IEP. The district presented proposed changes to the format to the parents and solicited their feedback, incorporating additional features into the form at the request of the parents. Because the change of the format of home/school communications was not a material change in service, and because no prior written notice and informed written parental consent was required, a violation of special education statutes and regulations is ***not*** substantiated on this issue.

Issue Four: The district failed to provide Progress Reports for the school year 2020-21.

Applicable Statutes and Regulations

Once the IEP team has developed measurable annual goals for a child, the team must include a description of how the child's progress toward meeting the annual goals will be measured. This measure of progress will enable parents, children, and educators

to monitor progress during the year, and, if appropriate, to revise the IEP to be consistent with the child's instructional needs. The idea is to use progress monitoring information in a formative way, to help with decision-making about instructional changes that may be needed.

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. 72-3429(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, 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 towards the child's measurable annual goals.

Parents' Position

The parents assert that, during the 2020-21 school year, they were never provided with reports regarding the student's progress toward attainment of her annual goals.

District's Position

The district contends that quarterly progress reports were developed throughout the 2020-21 school year, and a summative report which reflected the student's progress over four quarters and the extended school year was provided to the parents on September 20, 2021.

Investigative Findings

Because the parents and the district could not come to an agreement regarding the revision of the student's IEP, special education services were – throughout the 2020-21 school year – delivered to the student in the manner described in her November 2019 IEP. The computerized IEP system used by the district did not allow for the monitoring of established goals over a two-year period, so progress monitoring during the 2020-21 school year was recorded in a separate document which lacked the formatting that would otherwise have been present under the computerized system.

According to the parents, they did not receive quarterly progress monitoring reports during the 2020-21 school year. At 2:21 PM on September 13, 2021, the student's

mother sent an email to the special education coordinator asking for "all progress reports for the 2020-21 school year." The coordinator responded at 4:13 PM that same day stating, "I will have to get back to you for the progress reports after visiting with her teacher." The student's mother responded at 4:36 PM, copying the director of special education, asking, "Why weren't there any quarterly progress reports for [the student] for the 2020-21 school year? The last one we received was for ESY [extended school year] June of 2020."

On September 15, 2021, the director of special education sent an email to the student's mother stating, "I do not know why you would have not received the progress report, but I will make sure you get them. Of course, I am unable to go back during that reporting time and provide them as they should have been provided, but I can make sure to get them to you. Just for clarity, the progress reporting would be on the goals in the most current IEP for [the student] we have parent consent for, from 2019."

On September 20, 2021 – 5 school days after the initial request from the student's mother was received – the coordinator sent an email to the student's mother which included the progress reports from the previous school year.

Evidence provided by the district shows that the parents have for the 2021-22 school year been provided with quarterly progress monitoring reports.

Summary and Conclusions

In November of 2020, the district and the parents could not come to an agreement regarding the revision of the student's IEP. Therefore, throughout the 2020-21 school year and until November 3, 2021, the student continued to work on annual goals that had been established in November 2019. On September 13, 2021, the student's mother requested copies of all progress monitoring reports from the 2020-21 school year. A summative report regarding the student's progress at each of four quarters and the extended school year was sent to the student's mother via email on September 20, 2021 – within a reasonable time (5 school days of the parent's request).

While the district provided evidence to show that the student's progress was monitored during the 2020-21 school year, no evidence was presented to show that progress was reported to the parents on a quarterly basis. A violation of special education statutes and regulations ***is*** substantiated on this issue.

Issue Five: The district failed to implement the student's Behavior Intervention Plan (BIP) and to provide a 1:1 paraeducator.

Applicable Statutes and Regulations

As previously noted under Issue One and Issue Two, a district must implement a student's IEP as written.

Parents' Position

The parents state that because the 1:1 paraeducator assigned to the student was not present when the student displayed self-injurious behaviors during an Adapted Physical Education (APE) session, the behavior report was not completed correctly. The parents question whether the paraeducator has been present during APE sessions when the APE teacher works one-on-one with the student.

District's Position

While asserting that the student's 1:1 paraeducator and 1:1 nurse typically accompany the student to APE, the district stipulates the paraeducator was not present during the student's APE session on March 30, 2022.

Investigative Findings

The student's November 3, 2021 and January 26, 2022 IEPs state that she is to have 1:1 attendant care (a 1:1 paraeducator) throughout her school day.
The following statement was included in the "Program Modifications, Accommodations, and Supplementary Aids and Services" section of the student's November 3, 2021 IEP.

> Behavior log on a clipboard with notations by 1:1 paraprofessional, nurse, teacher, related services providers with initials of who completed the log on the document.

On December 1, 2021, in an email to the student's mother, the director of special education stated "any data collected in the ABC format will be directly related to the three identified target behaviors from the behavior intervention plan: disruptive vocalizations, self-injurious behaviors, and aggression…using the attached form [which} provides the options that are most common around her target behaviors. if something is different than the provided choices, staff will write a description."

The "Program Modifications, Accommodations, and Supplementary Aids and Services" section of the student's January 26, 2022 IEP includes the following:

> Behavior log of ABC data regarding the three identified behaviors in the BIP [behavior intervention plan].

Typically, the student's APE services are provided in either the gym or cafeteria where the student rides her adaptive bicycle. On March 30, 2022, the APE session was moved to the hallway outside of the student's classroom where the APE teacher worked one-on-one with the student. According to the district, the paraeducator left the building at 1:30 PM that day. By report of the APE teacher, this is the only time the paraeducator has not been present during an APE session.

At the beginning of the APE session, the student was introduced for the first time to a javelin – a piece of equipment she would be using in an upcoming Special Olympics activity. According to the APE teacher, the student became frustrated, slapped her right thigh three times, and vocalized. By the end of the session, the student was able to tolerate the activity and successfully used the javelin.

After the session, the APE teacher sent a text to the student's mother asking her to call. When the parent called, the APE teacher reported the student's behavior.

When the student's mother came to pick the student up from school at the end of the day, the parent asked the special education teacher for the behavior sheet used to record the student's behavior during APE. According to the parent, the teacher told the parent that a behavior sheet had not been completed because staff was not sure if the student's actions should be reported since the APE teacher was trying something new with the student. After returning home, the student's mother called the APE teacher to talk about the behavior sheet. The APE teacher told the parent that she would complete a behavior sheet regarding the incident the following day. The APE teacher also informed the parent that there had not been a 1:1 para with the student during the APE session.

On March 31, 2022, the APE teacher completed a behavior sheet related to the incident, noting that the antecedent to the behavior had been an "SC" or "Schedule Change." The form describes the 15-second behavior which occurred when the student was in PE with the APE teacher, noting that the student was using the javelin –

a "new activity." According to the behavior sheet, the student hit herself three times on her right leg and vocalized twice. The student was verbally redirected to task.

The parent asserts that the correct coding for the event should have been "TA" or "b/w activities" (a transition between activities). The parent asserts that this coding error was the result of the absence of the paraeducator and a lack of understanding of the behavior plan on the part of other staff members.

The parents sent an email to the special education coordinator and the principal on April 12, 2022 asking why a 1:1 para was not present during the APE session and why the student's BIP had not been followed. The special education coordinator responded on April 13, 2022, telling the parent that the APE teacher was working one-on-one with the student, that no other students were present and the APE teacher was able to give the student her full attention. The coordinator also wrote that the student's behavior may have been a reaction to a new activity.

Summary and Conclusions

The student's assigned 1:1 paraeducator was not present during an APE session on March 30, 2022. During that session, the student engaged in self-injurious behaviors when presented with a new activity. Despite initial frustration with the new activity, the student was able to complete the new activity successfully during her scheduled session. The student's behaviors were reported to the parent by the APE teacher on the day they occurred and were reflected on a behavior sheet completed by the APE teacher the following day.

While the parent disagrees with the APE teacher's coding of antecedent behavior, it is the opinion of the investigator that a description of the incident included on the form would provide sufficient information to inform future discussions with regard to the student's behavior plan.

A violation of special education statutes and regulations ***is*** substantiated with regard to the district's failure to provide attendant care (a 1:1 paraeducator) during the student's APE session on March 30, 2022. However, because evidence was provided to show that the APE teacher implemented the student's behavior plan, a violation of special education statutes and regulations with regard to that aspect of this issue is ***not*** substantiated.

Issue Six: The district failed to provide any instructional plan when on CBI trips.

Applicable Statutes and Regulations

As noted above under Issues One, Two, and Five the student's IEP must be implemented as written.

Parents' Position

The parents contend that comments written on the daily home/school communication sheets do not indicate that the student has been provided with intentional, structured instruction or goal-directed activities while on CBI outings at community businesses.

District's Position

It is the position of the district that the daily communication sheet is not intended to provide a lesson plan for the student's day. The district asserts that comments written by staff regarding CBI activities are meant to provide general notes about the student's mood, behaviors, and engagement rather than an outline of the instructional activities presented to the student. The district contends that CBI activities provide instruction opportunities on IEP goals in settings outside the classroom.

Investigative Findings

As noted above under Issue One, the district is to provide CBI services to the student 3 days each week. According to the student's special education teacher and the student's 1:1 paraeducator, these CBI activities are intended to provide numerous real life opportunities for the student to work on two of the goals in the student's November 3, 2021 and January 26, 2022 IEPs:

> Goal #2.1:
> By the end of the 2021-22 school year, [the student] will use her iPad (AAC) to request, comment, greet, and actively participate in activities in all settings (school, field trips, CBI trips, etc.) with adults and peers throughout her day, out of a field of 4 pictures on the iPad, with no more than 40% of communication attempts requiring a physical or verbal prompt, on 3/4 consecutive data days.
>
> Goal #4.1
> By the end of the 2020-21 school year, when given 10 items, [the student] will be able to place at least 80% of the items into a bag or container with only 3 verbal prompts total on 4 out of 5 data collection days.

The district has provided evidence to show that CBI activities have been reported on the daily communication sheet with general notes about the student's mood, behaviors, and engagement.

Summary and Conclusions

The district has provided the student with CBI opportunities as required by her November 3, 2021 and January 26, 2022 IEPs. During CBI outings, the student has been provided with numerous opportunities to work on two of her IEP goals. As required in both IEPs, the parents have been provided with daily communications that include reports of the student's CBI activities with general notes about her mood, behavior, and engagement. The student's IEPs do not require that the parents are provided with an instructional plan for CBI outings, therefore, a violation of special education statutes and regulations is ***not*** substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education laws and regulations on issues presented in this complaint. Specifically, violations occurred with regard to

- 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) which require that the district provide a FAPE to students by implementing their IEPs as written; and

- K.S.A. 72-3429(c)(3) and 34 C.F.R. 300.320(a)(3) which require that parents be provided with periodic reports of their child's progress toward attainment of IEP goals.

In a previous complaint (22FC203-002), the district was ordered to provide 60 minutes of compensatory CBI services for the district's failure to provide CBI opportunities for the student at a specific location during the period of March 30 through April 1, 2022. Therefore, with regard to the violation of 34 C.F.R, 300.101(a) and 34 C.F.R. 300.17(d) established under Issue One of this complaint, the district will not be required to provide any additional compensatory services to address the absence of the school nurse on April 1, 2022 since this violation relates to the same 60-minutes of CBI services as was addressed in the previous complaint..

With regard to the IEP-related violation established under Issue Two, training was provided for staff in December 2021 in order to ensure the appropriate implementation of the student's November 3, 2021 IEP. No additional compensatory actions will be required with regard to this issue.

With regard to the violation of K.S.A. 72-3429(c)(3) and 34 C.F.R. 300.320(a)(3) established under Issue Four, the district has already provided the required progress report (summative four quarters plus ESY) to the parents, and the parents are not alleging ongoing problems with the provision of quarterly progress reports,. Therefore, no additional corrective action for this violation will be required.

However,, USD #203 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with

   - 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written and by providing the student with appropriate CBI opportunities; and

   - K.S.A. 72-3429(c)(3) and 34 C.F.R. 300.320(a)(3) by providing periodic reports of student progress toward attainment of IEP goals.

2) Further, USD #203 shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON APRIL 18, 2022

DATE OF REPORT MAY 18, 2022

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

The complaint is against USD #259 (Wichita Public Schools). In the remainder of the report, "USD #259," the "school," the "district" or the "local education agency (LEA)" shall refer to this responsible public agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on April 18, 2022 and the 30-day timeline to investigate this complaint ends on May 18, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on April 19, 2022, May 5, 2022, and May 13, 2022.

With written parent consent, three additional persons participated in interviews as part of the investigation. Kelly Patton, private investigator license D5984 and parent ally appointed by the judicial court, joined the parent for the interview on May 5, 2022 and Glenda Cody, the student's grandmother, joined the parent for the interview on May 13, 2022. In addition, Kaitlyn Wagle, the student's targeted case manager at New Hope Services, was interviewed on May 16, 2022.

USD #259 made the following school staff available for a telephone interview on May 10, 2022:

- Amy Godsey, Mediation/Due Process Supervisor for USD #259
- Matthew Snodgrass, Principal for Gammon Elementary School
- Ryan Alliman, Director of Interrelated Student Services Program for USD #259

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials were used as the basis of the findings and conclusions of the investigation:

- Student Contact Log dated between September 15, 2020 and February 25, 2022
- Multidisciplinary Team Report dated October 20, 2020
- Individualized Education Program (IEP) for the student developed on October 20, 2020
- Release of Information Form between New Hope Services and Gammon Elementary School signed by the father on February 23, 2021
- IEP for the student developed on October 14, 2021
- Email dated November 15, 2021 at 12:13 p.m. written by Emma Schuette, Special Education Teacher to Matthew Snodgrass, Principal
- USD #259 School Board Policy 1389: Concealed Observations
- Email dated November 30, 2021 at 2:53 p.m. written by Ms. Schuette to Mr. Snodgrass and Bart Brittain, Campus Support from the district's Student Support Services
- Email dated December 1, 2021 at 2:25 p.m. written by Ms. Schuette to Mr. Snodgrass, Mr. Brittain, and Ryan Alliman, Director of Interrelated Student Services Program
- Letter dated December 6, 2021 written by Mr. Alliman to the parent
- Email dated December 10, 2021 at 3:29 p.m. written by Ms. Schuette to Mr. Snodgrass, Mr. Brittain, and Mr. Alliman
- Letter dated December 20, 2021 written by Mr. Alliman to the parent
- AngelSense Voice Features Deactivation Agreement
- Letter dated December 28, 2021 written by the parent to Mr. Alliman
- Email dated January 6, 2022 at 9:48 a.m. written by the father to Ms. Schuette
- Letter dated January 11, 2022 written by Daniel Lawrence, General Counsel for USD #259, to the father

- Letter dated January 20, 2022 written by Mr. Lawrence to the father
- Email dated January 26, 2022 at 8:05 a.m. written by Kaitlyn Wagle, the student's targeted case manager from New Hope Services, to Mr. Snodgrass
- Email dated January 26, 2022 at 8:19 a.m. written by Mr. Snodgrass to Ms. Wagle
- Email dated January 26, 2022 at 8:25 a.m. written by Ms. Wagle to Mr. Snodgrass
- Email dated January 26, 2022 at 8:57 a.m. written by Mr. Snodgrass to Ms. Wagle
- Email dated January 26, 2022 at 9:02 a.m. written by Ms. Wagle to Mr. Snodgrass
- Email dated January 26, 2022 at 9:15 a.m. written by Ms. Wagle to Mr. Snodgrass
- Email dated January 26, 2022 at 9:20 a.m. written by Mr. Snodgrass to Mr. Alliman; Ms. Schuette;, Heather Hardwick, Speech/Language Pathologist; and other school members of the student's IEP team
- Email dated January 26, 2022 at 9:31 a.m. written by Mr. Alliman to Ms. Wagle
- Email dated January 26, 2022 at 10:08 a.m. written by Mr. Alliman to Mr. Snodgrass, Mr. Lawrence, and Vince Evans, Assistant Superintendent – Student Support Services
- Email dated January 26, 2022 at 9:31 `a.m. written by Mr. Snodgrass to Ms. Wagle
- Case Note dated January 26, 2022 between 9:00 and 10:15 a.m. written Ms. Wagle
- PWN for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated January 27, 2022
- Email dated March 25, 2022 at 2:44 p.m. written by the father to Ms. Schuette and Jane Blank, BSN, RN, the school nurse at Gammon Elementary
- Email dated March 29, 2022 at 9:48 a.m. written by the father to Mr. Snodgrass and Ms. Schuette
- Permission to Obtain Information or to Use and/or Disclosure of Personally Identifiable Information form signed by the father on April 9, 2022
- Initial Speech and Feeding Evaluation completed by Alisha Roemer, Speech/Language Pathologist at the Speech, Swallow, and Voice Center dated April 13, 2022 and faxed to USD #259 on April 20, 2022
- School Nurse Logs dated April 8, April 11, April 12, April 13, and April 19, 2022 written by Ms. Blank
- PWN for Identification, Initial Services, Educational Placement, Change in Service, Change in Placement, Request for Consent dated April 20, 2022

- Written statement dated April 26, 2022 from Ms. Blank
- AngelSense website: www.angelsense.com
- 2021-22 School Year Calendar for USD #259
- USD #259 Response to the Allegations written by Amy Godsey, Mediation/Due Process Supervisor, dated May 5, 2022

Background Information

This investigation involves a seven-year-old male student currently enrolled in the first grade at Gammon Elementary School in USD #259 in order to receive special education and related service in a special program for students with low-incidence disabilities.

The student was initially diagnosed with Autism at the age of four on December 14, 2018 by the Heartspring School while he was living with his biological mother; however, the student did not receive any early childhood special education services according to records and the father's report.

He was initially evaluated for special education on October 20, 2020 during kindergarten while attending his neighborhood school, Adams Elementary School, in USD #259. At that time, the multidisciplinary team determined the student met the eligibility criteria to be identified as a student with the exceptionality of Autism. The student currently receives specialized instruction, occupational therapy, physical therapy, and language therapy due to significant delays in adaptive behavior, communication, attention, social skills, academic skills as well as sensory deficits and both fine and gross motor skills. The student lives at home with his father.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parent raised two issues that were investigated.

ISSUE ONE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to the parent request for a release of information to facilitate a speech and swallow study during the past 12 months.

Positions of the Parties

The father reported that he signed a release of information form to allow USD #259 and the Speech, Swallow, and Voice Center to share information. The father specifically requested that school staff keep a log of foods the student eats while at school to assist in food therapy, a medically related treatment that the student was on a waiting list to be evaluated for and to receive through the Speech, Swallow, and Voice Center. However, USD #259 refused to collect and provide this information to the Speech, Swallow, and Voice Center therapist as part of the Speech and Feeding Evaluation paid for at parent expense. The father subsequently requested to have the student's IEP amended to include keeping a food intake log but this was also denied.

USD #259 reported the parent emailed the school nurse and the special education teacher on March 25, 2022 and requested a release of information form be sent to him to allow the school and the Speech, Swallow, and Voice Center to share information for an upcoming evaluation being conducted at parent expense.

The district informed the father that a food log was not kept for the student as school staff did not consider this as an area of concern for the student. On March 29, 2022, the father requested that a food log be added to the student's IEP.

The school nurse provided the parent with a Health Insurance Portability and Accountability Act (HIPAA) – Family Educational Rights and Privacy Act (FERPA) Consent Form on April 8, 2022 and the parent signed that form on April 9, 2022. On April 12, 2022, the school nurse faxed the signed consent to release information form and a special dietary form to the Speech, Swallow, and Voice Center. USD #259 did not provide a food intake log because that data was not being collected and maintained in the school setting.

A copy of the Speech, Swallow, and Voice Center Evaluation Report dated April 13, 2022 was faxed to the school nurse on April 20, 2022 and that report concluded that

no special diet was required y the student while at school. For this reason, USD #259 provided the parent with a Prior Written Notice (PWN) refusing to add a food log to the student's IEP on April 20, 2022. It is the District's position that USD #259 did responded in a timely manner to the parent's request to release personally identifiable information to facilitate a speech and swallow study.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #259.

The student was initially evaluated on October 20, 2020 and found eligible for special education and related services under the exceptionality category of Autism. The Multidisciplinary Team Report noted that while the student has significant delays in self-help skills, the report states, "The student is able to feed himself finger foods and drink out of an open mouth bottle."

There were two IEPs in effect during the past 12 months (April 18, 2021 through the current date). Both the first IEP dated October 20, 2020 and the second IEP dated October 14, 2021 were developed with the parent in attendance. Neither IEP includes any goal or service related to feeding or eating. Neither of these IEPs includes any accommodation or modification related to feeding or eating.

On March 25, 2022, the father emailed Emma Schuette, Special Education Teacher, and Jane Blank, School Nurse, requesting that a food log be kept for the student and that a release of information form be provided so USD #259 and the Speech, Swallow, and Voice Center could exchange information for the purpose of a speech and feeding evaluation being paid for by the parent.

On March 29, 2022, the father emailed Matthew Snodgrass, Principal and Ms. Schuette stating,

> The student will be attending food therapy shortly. As he is on a waiting list which I previously informed the school. It is to my understanding that the staff will need to take inventory of foods the student takes at least three bites of so that I can compare these with notes at Speech and Swallow

> where he will be receiving food therapy services. These need to be provided daily and can just be simply wrote [sic] down with a signature by the individual that [sic] verifies them. Additionally, this will be added to the IEP until it is no longer needed effective immediately no consent needed from the school.

Notes contained in the Nurse's Log dated April 8, 2022, show that a release of information form was provided to the parent on that date. The Permission to Obtain Information or to Use and/or Disclose of Personally Identifiable Information form was signed by the father on April 9, 2022 and returned to the school nurse on April 11, 2022. On April 12, 2022, the school nurse faxed a copy of the signed consent form to the Speech, Swallow, and Voice Center along with a copy of Form 19B in case there was a recommendation for a special diet at school as a result of the feeding evaluation.

The speech and feeding assessments were completed at the Speech, Swallow, and Voice Center on April 13, 2022. The report of the assessment results concluded that "the student's oral motor skills for eating are within normal limits. His diet is limited in quantity and variety due to difficulty tolerating the sensory aspects of many foods". The report recommends oral function therapy with the following goals: 1) the student will chew and swallow at least one bite of 80% of the foods presented in therapy, and 2) the family will follow a home program to facilitate food exploration and improve mealtime participation.

On April 20, 2022, the school nurse received the faxed copy of the Evaluation from the Speech, Swallow, and Voice Center. The cover page of the email stated,

> I have attached the student's speech and feeding evaluations as well as his speech progress note. I did not complete the Meal Modification form as no special diet is needed.

Also on April 20, 2022, USD #259 provided the parent with PWN refusing the parent's request to add a food log to the student's IEP with the following explanation:

> On March 29th, the parent requested that school staff take inventory of foods that the student takes at least three bites of so that he could compare that date with notes from the Speech, Swallowing, and Voice

Center where the parent is taking the student to receive food therapy services. He requested this data collection be added to the student's IEP. The addition of the requested food intake data to the IEP was considered but at this time staff have not observed the student having any eating issues or associated food issues. Further, a review and consideration of the food assessment provided to the school by the parent on April 19, 2022 indicates swallowing and feeding abilities are within normal limits. The assessment is dated April 13, 2022. At this time the parent's request to add food intake data collection to the IEP is refused by the school.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.622(a)(1) require school districts to obtain parent consent prior to releasing personally identifiable information about a student to an unauthorized person unless the information is contained in education records and the disclosure is authorized without parental consent under a FERPA exception. It is important to note the specific definitions of the terms "personally identifiable information" and "education records" when analyzing this requirement.

Federal regulations implementing FERPA at 34 C.F.R. 99.3 state that the term "personally identifiable information" (PII) includes, but is not limited to the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the school district reasonably believes knows the identity of the student to whom the education record relates. A student's disability status and any information about a student's IEP services would fall under the definition of PII.

In this case, it is clear that the parent was requesting that USD #259 and the Speech, Swallow, and Voice Center share "personally identifiable information" because the student's disability status and information about the IEP would certainly need to be discussed and shared by the two agencies in the assessment process funded by the parent. .

Federal regulations implementing FERPA at 34 C.F.R. 99.3 define the term "education records" as any information directly related to a student that is recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche and is maintained by an educational agency or institution.

In this case, the education record the parent wanted USD #259 to share with the Speech, Swallow, and Voice Center was a food intake log that the staff would need to create by taking "inventory of foods the student takes at least three bites of so that I can compare these with notes at Speech and Swallow where he will be receiving food therapy services. These need to be provided daily and can just be simply wrote [sic] down with a signature by the individual that [sic] verifies them." Because the food intake log was not already an existing "education record" collected and maintained by the district, there was no requirement for USD #259 begin to collect and maintain this information in order to share with the Speech, Swallow, and Voice Center as requested by the parent. However,the parent's March 29, 2022 request to amend the student's IEP to include a food intake log would have resulted in the food intake log meeting the definition of an "education record."

The interviews and documentation show the father initially requested that the district and the Speech, Swallow, and Voice Center share personally identifiable information on March 25, 2022. On March 29, 2022, the parent requested the district to amend the student's IEP to include keeping a food intake log. USD #259 responded to the parent's request for a release of information by providing the father with a release of information form on April 8, 2022 and obtaining his written consent on April 9, 2022.

On April 12, 2022, the school nurse faxed a copy of the signed consent form to the Speech, Swallow, and Voice Center along with a copy of Form 19B in case there was a recommendation for a special diet at school as a result of the feeding evaluation. The

Speech and Feeding Evaluation was completed on April 13, 2022 and faxed to USD #259 on April 20, 2022.

USD #259 considered this information along with the parent's March 29, 2022 request to amend the IEP to include a food intake log and provide the parent with PWN dated April 20, 2022 refusing the action requested by the parent.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to respond to the parent's request for a release of information to facilitate a speech and swallow study during the past 12 months.

> ISSUE TWO: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond to the parent's request to conduct an IEP meeting to discuss the need for a tracking device following the elopement incident in October* 2021.

*Note: The father initially reported this incident happened in December 2021 but documentation from the school showed the elopement incident occurred on October 13, 2021. The father acknowledged the October 2021 elopement was the incident he was referring to in his allegation. For that reason, the original Issue Two allegation was updated to refer to the correct date of the elopement incident.

Positions of the Parties

The father reported the school district was negligent when they allowed the student to elope from the building, cross a heavily traveled road, and wade into water up to his waist before a school staff member was able to catch him and accompany the student back into the school building. The father reported he was told by school staff that this incident was "not a big deal." He believes the school staff are downplaying the seriousness of the elopement incident and questions the safety of his student while at Gammon Elementary School.

Because of the safety concerns for his son, a GPS tracking device, AngelSense, was purchased and placed in the student's backpack and sent to school beginning in November 2021 so the parent could monitor and be assured of his son's safety.

However, USD #259 believed the AngelSense device includes both audio monitoring and recording as well as GPS monitoring so they have continually refused to allow the

tracking device to be used at school. The father reported multiple emails, phone calls, and letters were exchanged with the school staff in November 2021, December 2021, and January 2022 trying to justify the continued use of the AngelSense device to ensure the student's safety but USD #259 still refused to allow the use of the AngelSense device at school.

The father stated that he requested an IEP team meeting at the beginning of January 2022 to discuss adding the AngelSense device to the student's IEP; however, USD #259 never contacted him to arrange an IEP team meeting. He acknowledged that he participated in a phone call with the student's targeted case manager and the school staff on January 26, 2022 and briefly discussed the AngelSense device before hanging up because Mr. Snodgrass and Mr. Alliman raised their voices and were disrespectful and rude to him. The father insisted this was not an IEP team meeting and that he did not waive the ten day notification requirement.

USD #259 acknowledged that the student eloped from the school campus on October 13, 2021. The classroom para chased him as he crossed the street and waded into a pond and she maintained visual contact with the student throughout the incident. The para removed him safely from the pond and then accompanied the student back to the school building. The parent was informed about the incident that same day by administration.

Beginning in November 2021, the student began being sent to school with an audio and GPS monitoring device. This device was discovered by the teacher on at least five separate occasions. USD #259 believes the audio features of the tracking device violate school board policy related to concealed observations and shared this information with the father via phone calls, emails, and letters beginning in December 2021.

On January 5, 2022, the father requested that the IEP team discuss the monitoring device and school staff made multiple attempts to arrange for a mutually agreeable date and time for the meeting but with no response from the parent. On January 6, 2022, the father instructed the classroom teacher to unilaterally add the AngelSense device to the student's IEP.

On January 20, 2022, the district's general counsel sent a letter offering two separate dates and times to hold the IEP team meeting but received no response from the parent. On the date of the first suggested meeting, January 26, 2022, the principal contacted the student's targeted case manager in an attempt to get a meeting scheduled and, with her assistance, the father agreed to participate in an IEP team meeting via phone on that same date. Unfortunately, the father only participated in the IEP team meeting for a short time prior to hanging up and exiting the meeting. USD #259 reported that the targeted case manager and the school members of the IEP team continued to meet and discuss the use of the AngelSense device but ultimately refused the parent's request to amend the student's IEP to include the use of the monitoring device. The parent was provided with a PWN explaining this decision on January 27, 2022. School staff acknowledge that the AngelSense device was not sent to school again beginning in February 2022.

USD #259 believes that it appropriately responded to the parent's request to conduct an IEP team meeting to consider the use of the AngelSense device during the 2021-22 school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #259.

Due to the family's significant concerns for the safety of the student following the eloping incident on October 13, 2021, the student's grandmother purchased an AngelSense device, a GPS tracking device for parents to track their child's movements which is marketed to parents of children with disabilities. The father acknowledged that the AngelSense device was sent to school in the student's backpack or attached to his clothing beginning in November 2021 and ending at the end of January 2022 but disagrees that there is a voice recording feature.

The AngelSense website describes the device as "a GPS tracker for kids, teens, adults, and elderly with an assistive speaker phone. It offers the most advanced GPS tracking system for kids and is the GPS child tracker made especially for special needs and autism." The AngelSense device has 2-way voice capabilities with an auto pickup

speaker phone which allows the parent to talk to the child or people near the child at any time as well as has an SOS button to allow the child to call the parent's phone at any time. The website includes a statement that "AngelSense is fully compliant with school regulations, adopted by thousands of schools nationwide." The website also includes a statement that some schools require "the voice features to be deactivated during school hours due to privacy reasons."

On November 15, 2021, an AngelSense device was discovered in the student's backpack because it was beeping and the special education teacher notified her building administrators of her concerns for the use of the device in the school setting. On November 30, 2021 and once more on December 1, 2021, the special education teacher again reported the continued use of the AngelSense device at school to her building administrators as well as to district-level administrators. The special education teacher reported multiple incidents where the AngelSense device was beeping during class time.

On December 6, 2021, Mr. Alliman mailed a letter to the parent informing him of USD #259's position on the use of the AngelSense device in the classroom environment. USD #259 explained its position with supporting documentation citing the Family Educational Rights and Privacy Act (FERPA) and School District Policy #1389 governing concealed observations of students and staff. In addition, the letter referenced the district's contractual commitment to its teachers as described in Article XV, Section A, Paragraph 8 of the district's collective bargaining agreement. Mr. Alliman invited the father to engage in discussion regarding finding a potential resolution.

However, the father continued to send the AngelSense device to school with the student and on December 10, 2021, the device activated multiple times. The special education teacher again notified building administrators as well as district-level administrators reporting that the device beeped or rang twice loud enough to disturb other students in the classroom. A description of another incident of the device being activated said it sounded like a ringing phone and went off twice, back to back. Both the teacher and para heard the ringing and then heard a ruckus and a man's voice through the AngelSense device. There was loud background noise as well.

The parent was contacted by phone on December 16, 2021 and by a letter written by Mr. Alliman on December 20, 2021 offering to work collaboratively to create a Voice

Features Deactivation Agreement that would result in the student being able to only use the GPS feature of the device during school hours. The letter reported that the agreement was created at the recommendation of the AngelSense Liaison who provided information on the capabilities of the device and how the device could be used for the student at school while staying in compliance with FERPA, the Concealed Observations Policy, and the district's contractual agreement to its teachers. A copy of the recommended Voice Features Deactivation Agreement was attached to the letter and the parent was requested to review and sign if he approved.

On December 28, 2021, the father responded to Mr. Alliman stating that he considered the recent phone call, emails, and letter to be "threatening and harassment" and requested that Mr. Alliman no longer "use the telephone to badger, abuse, or otherwise bother me anymore." The father also expressed that he was not in agreement with the AngelSense Voice Features Deactivation Agreement. He reiterated that the device was "used nationwide", that the device does not have a voice recording feature, and that "consent of at least 1-party to the conversation is all that is needed, not consent of 2-parties (therefore your concerns are moot and hold no merit over Kansas law)." The father indicated that the district "shall not infringe on my fundamental rights to provide care for my disabled child as it is my legal right to track my son. And any attempt to remove the device without a court order shall be deemed civil disobedience or passive resistance regardless of school policy. "

On January 5, 2022, Ms. Schuette again reported to building administrators and district-level administrators that the AngelSense device was still being sent to the district in the student's backpack.

On January 5, 2022, the parent spoke to Ms. Schuette and requested an IEP team meeting to discuss adding the AngelSense device into the student' IEP. On January 6, 2021, the parent sent an email to Ms. Schuette making this same request in writing. The school staff reported calling the parent to try and schedule an IEP meeting without success.

On January 11, 2022, Daniel Lawrence, General Counsel for USD #259, sent a letter to the father once again explaining the district's position in regards to the use of the AngelSense device at school and stating that "if you insist on the continued pursuit of your current course, the matter will be referred to law enforcement."

On January 20, 2022, a letter written by Mr. Lawrence was sent to the father listing two possible dates to hold the IEP team meeting: January 26, 2022 at 9:30 a.m. or January 27, 2022 at 2:30 p.m.

Documentation shows that there was a current Release of Information Form between New Hope Services and Gammon Elementary School signed by the father on February 23, 2021 which allowed these two agencies to share personally identifiable information about the student. This release form shows an expiration date of one year from the date of consent which was February 22, 2022.

On January 26, 2022, Mr. Snodgrass contacted Kaitlyn Wagle, the student's targeted case manager at New Hope Services in another attempt to schedule an IEP team meeting. At that time, the targeted case manager contacted the parent and an IEP team meeting was mutually agreed upon for that same day at 9:30 a.m. School staff reported the IEP team meeting was held via Microsoft Teams with the parent and case manager attending via a phone call. Unfortunately, the parent only stayed on the phone call for a short time and then abruptly disconnected. The school members of the team continued the meeting and discussed the parent's request for the AngelSense device at school. The parent was provided with a PWN refusing the request on January 27, 2022.

The Case Note dated January 26, 2022 between 9:00 and 10:15 a.m. written by Ms. Wagle stated,

> The principal sent me an email of the letter that the school had sent him. In the letter, they presented 2 different times for the IEP team meeting. I asked the principal if I could get ahold of dad if today would still work. He let me know he would reach out to the team. He replied that yes, they could all get together. I called the dad twice and the second time I got ahold of him and he said he would join the meeting. The team began speaking about the AngelSense device that the student wears, and because of the person speaking to the dad, he hung up. The meeting continued and they denied the request to add the AngelSense to the IEP as they do not believe the student has eloped enough from the school. It was discussed that I would be the middleman in order to try and keep some piece [sic]. I emailed dad with all the updates and requests.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.324(b) require school districts to respond to a parent's request to review and revise a student's IEP as appropriate. The IDEA does not specify a timeline for the district to respond to a parent's request but the KSDE has recognized 15 school days as a reasonable amount of time.

In this case, the parent made the request for an IEP team meeting on January 5, 2022 and the district responded on January 20, 2022 providing two possible dates and time to conduct the IEP team meeting. This is only ten school days from the date of the parent request thus documenting that USD #259 was responding to the parent request in a reasonable amount of time.

State regulations at K.A.R. 91-40-17(a)(2) require school districts to provide the parents with notice of the IEP team meeting at least 10 days in advance of the meeting. However, the parent can waive this requirement and agree to meet prior to the 10 days if a meeting date and time are mutually agreed to by both parties.

In this case, USD #259 sent a letter on January 20, 2022 offering two possible dates and times to conduct the IEP team meeting: either January 26, 2022 at 9:30 a.m. or January 27, 2022 at 2:30 p.m. While the district did not provide the parent with the required 10-days advanced notice of possible IEP meeting dates, interviews and documentation found that when the parent agreed to hold the IEP team meeting on January 26, 2022 at 9:30 a.m., he waived the 10-day advance notice requirement because both parties were in agreement with the date and time to hold the IEP team meeting.

Federal regulations at 34 C.F.R. 300.322(a)(1)-(2) require school districts to ensure that the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, which includes notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place.

In this case, the parent was provided with the opportunity to participate in the IEP team meeting on January 26, 2022. Interviews and documentation show the parent did participate in the IEP team meeting for a short time; however he hung up and disconnected from the IEP team meeting because he believed Mr. Snodgrass and Mr. Alliman were being disrespectful to him. The rest of the school members of the IEP team and the student's targeted case manager continued with the IEP team meeting and discussed the parent's request to add the AngelSense device to the student's IEP.

The parent was given the opportunity to participate in the IEP team meeting on April 26, 2022 but he chose to leave the meeting early and to not participate any further. There is nothing in the IDEA which requires the parent to fully participate; instead the only requirement is that the parent be given the opportunity to participate.

The evidence presented supports the finding that USD #259 has appropriately responded to the parent's request for an IEP team meeting to discuss the AngelSense device made during the past 2021-22 school year. Based on the foregoing, a violation of special education statutes and regulations is not substantiated.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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)

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON MARCH 24, 2022

DATE OF REPORT: APRIL xx, 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on April 11, 2022. Mrs. _____' daughter was present during the call and acted as translator. On March 29, April 11, and April 20, 2022, the investigator spoke via telephone with Amy Godsey, Mediation/Due Process Supervisor for the district.

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

- IEP for the student dated January 29, 2021
- Q1 Report Card for the 2021-22 school year
- Discharge Patient Passport dated November 1, 2021
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 9, 2021
- Q2 Report Card for the 2021-22 school year
- IEP Progress Report dated December 17, 2021
- Notice of Meeting dated January 14, 2022
- ComCare Appointment History for the period of January 13 through March 24, 2022
- Extension of 60 School Day Timeline dated January 24, 2022
- IEP for the student dated January 27, 2022
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated January 27, 2022

- IEP Progress Report dated March 10, 2022
- Q3 Report Card for the 2021-22 school year
- Notice of Meeting dated March 24, 2022
- Aviso de Reunion dated March 26, 2022
- Student Attendance Profile for the student for the period of August 17, 2021 through April 21, 2022
- Attendance record for the student for the 2020-21 school year
- GenEd Student Contact Log regarding the student covering the 2021-22 school year
- Special Ed Student Contact Log regarding the student covering the period of February 27, 2017 to March 28, 2022

Background Information

This investigation involves an 11-year-old boy who is enrolled in the sixth grade in his neighborhood middle school. He was determined to be eligible for special education under the categories of Specific Learning Disability and Speech/Language Disabilities. The student has been diagnosed with ODD (Oppositional Defiant Disorder), Conduct Disorder, ADHD combined type, and Language Disorder. The student reads independently at a kindergarten to second grade level and demonstrates math skills in the first-grade level.

In addition to the services provided to the student through the school district, the student also is supported through ComCare of Sedgwick County, a local agency that assists individuals with mental health needs. In October of 2021, the student was admitted to the KVC Children's Psychiatric Treatment facility for four days because of "suicidal ideation" and "behavioral deregulation." Following his hospitalization, the student was to receive ongoing mental health support through ComCare, but the student has missed most of his therapy sessions. Additional support has been available to the student and his family through other agencies outside of the school district including Kansas Behavioral Health Services and the International Rescue Committee (IRC). As shown on its website, IRC "provides opportunities for refugees, asylees…and other immigrants to thrive in America."

Issues

In her complaint, the parent identifies five concerns.

Issue One: The school has failed to provide the student with special education services.

Applicable Statutes and Regulations

Federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

At 34 C.F.R. 300.324(b)(1)(ii), federal regulations require districts to revise a student's IEP to address any lack of expected progress toward the student's annual goal(s). When absences are interfering with progress, districts should take steps to address the lack of progress.

Parent's Position

The parent asserts that she notified the middle school that the student had an IEP in place when he started the school year, but the school has not provided the student with the services he needs. According to the parent, she was informed by the school social worker that the student was in small groups some days, but the student told the parent that he was not.

District's Position

It is the position of the district that the student has been enrolled in adapted core content classes since the start of the school year, and these classes have provided the special education services called for in the student's IEP.

Investigative Findings

During the period of January 29 to May 25, 2021 – while enrolled in 5th grade in his local elementary school – the student received 40 minutes of class-within-a-class support twice a week for science and social studies and 180 minutes of specialized instruction for reading and math in a pull-out setting 5 times a week.

According to the "Statement of Special Education/Related Services" section of the student's January 29, 2021 IEP, the student was – for the 2021-22 school year – to receive 160 minutes of special education services, 5 days a week for ELA (English/Language Arts), Math, Social Studies, and Science in a special education setting.

The delivery model for the student's special education services changed as the student moved to the middle school. Rather than being pulled from a general education classroom to go to a separate special education setting, the student has, as of the first day of of the 2021-22 school year, been enrolled in four hours each day of core content taught by certified special education teachers. These classes included the following:

- 1st hour: Social Studies (7:00 to 7:43 = 43 minutes);
- 2nd hour: Mathematics (7:47 to 8:28 = 41 minutes);
- 6th hour: Science 10:26 to 11:08 = 42 minutes); and
- 8th hour: Language Arts (12:44 to 1:25 = 41 minutes) for a total of 167 minutes per day.

When the student's IEP annual review was completed on January 27, 2022, the IEP team continued to recommend that the student receive special education services through these same four classes.

According to the IEP Manager for the student, the special education classes in which the student is enrolled are referred to as "Adapted" classes. This title reflects the teacher-made accommodations and adaptations of classroom material that are used to ensure that students are receiving the individualized instruction that is necessary for them to access the curriculum and receive a free appropriate public education (FAPE).

The adapted classrooms are designed to appear upon entry to be the same as any other respective subject area classroom. These classrooms are located in three different hallways in the school building depending on subject area. Students who attend these classes move from class to class at the same time and in the same fashion as do their peers who do not have IEP services. The classes are not outwardly identifiable to other students as being a special education setting. Classes are separated by grade level like other general education classes.

All the students in the adapted classrooms have IEP services. The number of students in these classes is significantly smaller than in a typical general education classroom.

Class sizes vary depending on the student body need for each subject area and based on the school's master scheduling. As an example, the special education science classes taught by the student's IEP manager currently range in size from three students to eight students compared to general education classrooms where the number of students enrolled is typically closer to twenty.

All of the student's adapted core content classrooms are instructed by teachers that are certified specifically for special education. These special education teachers have an educational background and training that allows them to meet the needs of their specific students. Their training paired with reduced classroom size enables classrooms to function and student accommodations to be met without the use of a para educator present in the classroom.

According to the school, students' IEP goals are naturally worked on through classroom tasks and activities. Writing and reading goals are addressed through naturally occurring writing and reading work for subject mastery in Social Studies, Science, and English Language Arts. Specific writing and reading goals are further dealt with in the English Language Arts classroom and through tiered literacy intervention classes. Mathematics goals are processed through naturally occurring mathematics work for subject mastery in Math and Science classes. Specific math goals are further worked on in grade level Mathematics classes and in tiered mathematics intervention classes. If additional testing or evaluation of student IEP goals is needed it can be done on an individualized basis through an advocacy, or home room, class.

Eight students are currently enrolled in the student's 1st hour social studies class. According to the teacher, the student is working on his reading goal while in her classroom.

The teacher describes her classroom as follows:

> Assignments in the classroom are typically 3rd grade to 5th-grade level. When breaking down these texts, if it is closer to 3rd grade we will do a jigsaw (where students will get into pairs, where 1 student will read a paragraph and another student will help find answers, and then they go sit with other groups to share their answers), but if the text is closer to 5th grade, I will read to the students as they have a copy on their desk. We stop at words that are hard or interesting to explain their meaning. If we are doing a 5th-grade level text, sometimes I will have students take turns reading out loud by themselves a few sentences at a time. Any student who is too shy will typically come up to my desk and read to

me, and I will "copy read" louder for the rest of the students. Fifth grade texts will also be paired with some kind of vocabulary section. These assignments are also paired with vocabulary assignments and reward-based vocabulary games. These activities align directly with _____'s goal to read independently and answer comprehension questions at his grade, although he struggles to come to my classroom.

Fourteen students are assigned to the student's 2nd hour mathematics class. The students in the classroom work on assignments and tasks that align with the state math standards for 6th grade. Accommodations that are provided for the student, when he is in attendance, include the following: manipulatives (when related to the task), calculator (as needed), all instructions and word problems read aloud, and tasks are broken down and/or chunked up.

There are 7 other students in the student's 6th period science class. Classroom instruction is adapted from the district-provided STEM Scopes curriculum utilizing interactive presentations in the form of Nearpod and Brainpop along with the materials adapted for engagement, exploration, explanation, evaluation, and intervention. This includes activities designed to help students engage with the material through labs and projects, explore the concepts independently and through group activities and simulations, intervention activities that provide repeat instruction to students from different points of view, and activities that connect the material presented to current real world affects. The science curriculum allows for opportunities to work on goals for mathematics and reading.

Eleven students are enrolled in the student's 8th hour language arts class. Instruction in this classroom provides additional focus on the student's reading goal. The classroom curriculum provides the student with an opportunity to work on reading comprehension at his level, and gives the student opportunities to work on skills required to improve his reading comprehension and to learn the different word roots that help him understand new unknown words.

The student has a history of chronic absenteeism. During the 2020-21 school year, the student was absent for all or part of 33 days. He was counted as truant 11 times and tardy 19 times, generally arriving at school between 9:00 and 10:00 AM. He was out of the country for 3 days and missed school due to illness or medical treatment a total of 5 times.

Classes begin at 7:00 AM at the middle school. Starting on the third day of the 2021-22 school year, the student began missing classes. During August 2021, the student was absent from one or two of his classes on three days. In September 2021, he missed some or all classes on 13 days. He missed some of his classes on 7 days in October 2021 and was absent from most of his classes on 4 more days that month. In November 2021, he missed all or part of 13 days, and in December 2021 he attended all of his classes on only 2 days. The student attended a full day of school only once in January 2022 and four days in February 2022. For the rest of February 2022, the student missed all or part of his classes. The pattern continued into March 2022 when the student missed all or part of 15 (out of 17) days. As of April 21, 2022, the student has missed all or part of 10 (out of 13) school days.

Records provided by the district show that during the 149 school days between the start of the 2021-22 school year on August 12, 2021 and April 21, 2022, the student missed his first hour class 113 times (76%), his second hour class 101 times (68%), this third hour class 100 times (67%), his fourth hour class 53 times (36%), his fifth hour class 41 times (28%), his sixth hour class 40 times (27%), his seventh hour class 40 times (27%), his eighth hour class 41 times (27%), and his ninth hour class 40 times (27%). As a result of his absences, the student was unavailable for 295 periods of special education support (49% of his special education classes). The student's first hour special education social studies teacher reports that the student was only in attendance on three days during the second semester. The student was present for only two days during the second semester for his math class.

The student's absences include those days when the student has either been late in arriving at school or has not attended at all on a given day, as well as periods when the student has come to the school building but has refused to leave the office to go to class. None of the recorded absences have been the result of disciplinary consequences.

About one third of the student's twenty-nine full day absences between the start of the 2021-22 school year and the end of March 2022 have been for medical reasons or illness. An additional 14% were the result of Covid 19 quarantine.

School counselors have worked with the student to try to determine the reasons for his school resistance but have been unsuccessful. Staff report that the greatest successes have come from talking with the student away from others, giving him wait time to control his emotions before going to class. Positive incentives have been provided. Staff check-in's have been conducted during times when he is regulated in

order to develop a positive relationship. The student has been provided with quiet spots to rest and regulate. Multiple staff members have talked with the student in an effort to determine the cause for his reluctance to come to school and go to class. His math class was changed because he was missing his second hour adapted math class so frequently.

On March 7, 2022, following a testing session with the school psychologist, the student stated that he did not want to go to his 7th hour math class because he felt that his teacher did not like him. On March 10, 2022, the building level Child Study Team discussed strategies to address this situation including the possibility of changing the student's class. The student's general education math intervention class assignment was changed as of March 21, 2022.

A "GenEd" contact log provided by the district shows that the student's 6th hour adapted science class teacher spoke with the parent on March 1, 2022 writing

> "Parent made me aware that [the student's] first hours of the day had low grades because she struggles to get [him] to school as he resists and is very difficult to get up and out."

The science teacher's only other recorded contact with the parent occurred on January 14, 2022 when the teacher "contacted mother to schedule IEP meeting."

Two other entries were recorded in the GenEd contact log. On November 19, 2021, a social worker at the school contacted the parent "regarding an incident that a student made about [the student]." A March 28, 2022 entry noted that the student "got to school at 9:07 today."

The district also provided a "Special Ed Student Contact Log" regarding the student. Entries began in February 2017. Prior to the start of the 2021-22 school year, all entries were associated with the scheduling of meetings. On December 16, 2021, the speech/language pathologist spoke with the parent who expressed concern that the student

> "has not really gotten an education this year because he has been too anxious to go into his classes. Also he manifests this through getting angry so he has spent a lot of time in the office. Mom reported that he is now receiving ComCare at school and is participating in a program that provides services at home. She is concerned that he is not able to fully express himself. Mom said,

> for example, 'He can tell that he is in a fight but can't explain why.' She says he mixes Spanish and English when he talks. Mom said that he is enrolled in the ESOL classes at [the middle school]. She wanted the SLP to continue indirect services to help support teachers if needed by providing visuals or resources within her means."

Additional contacts with the parent were logged on January 13, 20, and 24, 2022 with regard to the student's reevaluation. On March 2, 2022, the record shows that the parent and a representative from IRO met with the social worker and discussed the parent's concerns regarding the student's attendance, his refusal to go to class, and missed therapy sessions. A 7:35 AM entry on March 4, 2022 by the social worker shows that

> "Mom was having difficulty getting [the student] in the school. [The student] was screaming and crying and refused to go to school. Mom was trying to force and push [the student] to the school. Also, informed mom that Comcare reported that [the student] was refusing to go to therapy when therapist would get him from class. Also, if [the student] was absent on day of therapy, he was not seen."

According to the Special Ed Student Contact Log, the social worker left a telephone message for the parent on March 22, 2022 asking if the parent would be willing to meet to talk about her concerns. The log shows that "Mom called attendance clerk back and stated to her that she was getting assistance through someone else and would contact KVC to determine if she should meet with the school."

A March 24, 2022 entry in the Special Education Contact Log notes that the social worker spoke with a staff member from "KS Behavioral Health" who had been working with the parent to connect the parent and the student to mental health services. The social worker wrote, "We discussed how to support mom. We wanted to do a conference call with mom to talk about mental health services."

A second entry dated March 24, 2022 notes that the social worker, the principal, and a translator met with the parent to complete a parent interview for an FBA (functional behavior assessment).

A document entitled "IEP Progress Report – Annual Goal" dated December 17, 2021 shows that the student's progress on his reading fluency goal had – when assessed on March 19, 2021 – not been considered sufficient to meet that goal by the time of his

next annual IEP scheduled for January 2022. That same report shows that when reading progress was assessed on October 14, 2021, it had been determined that while "progress [had] been made towards the goal…the goal may not be met by the annual IEP. Goal, instructional strategies and student supports may need to be reviewed." By December 17, 2021, the student was reading at a rate of 10 words per minute with 54% accuracy – well below his goal of 40 words per minute with 95% accuracy. His mastery level was at level 2, indicating that the goal, instructional strategies and/or student supports needed to be reviewed.

With regard to a second reading goal – reading silent *e* words – the student had not made sufficient progress over two monitoring periods (May 19, 2021 and October 14, 2021) to meet the goal. As of the December 17, 2021 monitoring, progress had been made, but the evaluator still felt that the goal might not be met by the annual review. Progress had been made on a math computation goal in May 2021, but at both the October 2021 and December 2021 monitoring, the evaluator was unsure whether the student would meet his goal.

The IEP progress report dated March 10, 2022 shows that the student's progress with regard to both his reading goal and his math goal was not sufficient to meet these goals by the annual IEP. Therefore, according to the report, "Instructional strategies and/or student supports need to be reviewed."

The student's report card indicated the student was not meeting performance standards in his second hour Math class during either the second of third quarter. His performance level on all measured standards was "0" meaning that even with help, he was unsuccessful.

No evidence was provided by the district to show that the student's IEP team met until January 27, 2022 when the student's annual review was conducted. Under the "Health/Physical" needs portion of the "Summary of Present Levels of Academic Achievement and Functional Performance" section of the document, it is noted that "Teachers report no known health concerns from classroom observation but do note a high level of classroom absences that are increasingly prevalent in earlier classes." The "Other" portion of that same section contains the following statement:

> "Teachers have noted that [the student] struggles to attend school regularly. This is of increased concern for his morning classes that show the worst attendance level but of general concern throughout the school day. Student's

average attendance is recorded as 60 percent for the 2021-2022 school year. This is quantified by a total of 39 missed school days out of 97 enrolled days."

Summary and Conclusions

Since the start of the 2021-22 school year, the student has been enrolled in four adapted core content classes (Social Studies, Math, Science, and Language Arts) which made available to the student all of the special education service minutes called for in both his January 29, 2021 and January 27, 2022 IEPs. The classes are designed to provide the student specialized instruction in a class with fewer students which allows for greater individualized instruction and focus on IEP goals.

However, shortly after the start of the school year the student began arriving at school well after the 7:00 AM start of the school day. By the end of the first quarter, the student had missed his first hour adapted Social Studies class 24 times and was tardy on an additional 4 occasions. He was absent from his second hour adapted Math class 19 times, and tardy once. The student missed his adapted Science class 8 times and his adapted Language Arts class 5 times.

The pattern of absences continued throughout the second quarter. During that period, the student missed 56 more Social Studies classes, 47 Math classes, 19 Science classes, and 16 Language Arts classes.

By April 21, 2022, the student had missed a total of 295 periods of special education services – 49% of all of the classes that were available to him. He had missed 76% of his first hour Social Studies classes, 68% of his second hour Math classes, 27% of his sixth hour Science classes, and 27% of his eighth hour Language Arts classes.

The student did not achieve the goals established in his January 29, 2021 IEP and his progress toward attainment of the goals established in his January 27, 2022 IEP has not been sufficient for him to reach those goals by the time of his next annual review. However, there is no evidence to show that an IEP team meeting was convened to address this lack of progress.

The student's January 27, 2022 IEP contains references to the student's absences, but no goals related to attendance were established and no plan was put in place to address the student's chronic absenteeism. No Functional Behavior Assessment (FBA) was completed to look into why the student was missing his classes. No behavior plan

was put in place to try to encourage attendance or ease the transition from office to classroom.

While the school may have little control over factors outside of the school setting which contribute to a student's chronic absenteeism, the school is not absolved of all responsibility to attempt to address the problem. Making special education classes available to a student who misses at least half of those classes – more than 75% of some – does not constitute the provision of FAPE (free appropriate public education).

Many outside agencies are supporting the student and his family, but no evidence was provided to show that any effort has been made by the school to collaborate with those agencies in a meaningful, targeted way to address the student's chronic absenteeism.

The United States Supreme Court has defined the term "Free Appropriate Public Education" (FAPE) to mean an IEP that is reasonably calculated to enable a child with a disability to make appropriate progress in light of the student's circumstances (See, Endrew F. v. Douglas County School District, 117 LRP 9767 (S.C. 2017). However, developing such an IEP is not the end of the requirement. The United States Circuit Court of Appeals for the 10th Circuit (and Kansas is in the 10th Circuit) has said that a FAPE is an on-going, dynamic activity and, as such, a school district cannot ignore a clearing failing IEP over time (See, O'Toole v. Olathe USD 233, 144 F.3d 962, 28 IDELR 177 (10th Cir. 1998). That means that when an IEP is failing, the district has an on-going responsibility to address a student's lack of progress.

The investigator does not pretend to know why this student is not coming to school or to offer any quick fix that would magically solve what is clearly a profound problem. Indeed, this may be a problem without a truly satisfactory resolution. But the school's failure to take any action over nearly eight months to try to address this difficult situation and meet the needs of this student is clearly a failure to provide him with FAPE. A violation of special education statutes and regulations is substantiated on this issue.

Issue Two: The student is staying all day in the office, not going to classes, and not receiving IEP services.

Applicable Statutes and Regulations

As noted above under Issue One, federal regulations, at 34 C.F.R. 300.101(a), require that a student who has been determined eligible for, and in need of, special education services, and whose parents have provided written consent for the provision of those services, be provided with a FAPE (Free Appropriate Public Education). 34 C.F.R. 300.17(d) states that FAPE means, in part, special education and related services provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. 300.320 through 300.324. A district must implement a student's IEP as written.

Parent's Position

The parent states that the student spends most of the days that he is in school in the office instead of his classes. She contends that while he is in the office, no one brings him work to do, and no one provides special education support.

District's Position

The student has – by report of school staff – frequently spent time in the office or other non-classroom settings because, once the student arrives at school, he is often unwilling to leave those spaces and move on to his assigned classes. It is the position of the school that bringing assignments to the student while he is in the office might reinforce the student's classroom avoidance behavior.

Investigative Findings

Both the parent and the district agree that the parent has had difficulty getting the student to come to school. On some days, the parent has driven the student to the building and dropped him off, and school staff have then attempted to encourage the student to go into the building. Once inside the school building, however, the student has frequently insisted on remaining in the office or student center where he cries and refuses to leave. Given the opportunity to calm himself, the student has on many occasions moved on to his fourth hour class and then on to the remainder of his classes throughout the school day. Only rarely has the student returned to the office once he has left that space. Once the student has moved out into his classes, his behavior has been appropriate.

In total, between the start of the 2021-22 school year on August 12, 2021 and March 31, 2022, the student missed his first hour class 86 times, his second hour class 74 times, this third hour class 73 times, his fourth hour class 34 times, his fifth hour class

24 times, his sixth hour class 23 times, his seventh hour class 22 times, his eighth hour class 20 times, and his ninth hour class 21 times.

The majority of the student's class absences result not from the student remaining in the office but from the student coming to school late or not at all. Although no evidence was provided in support of this contention, the school principal asserts that at the time of this complaint the student had spent no more than the equivalent of 9 school days (27 class periods) in the office or student center, fewer than the number of days school are permitted to remove students from school without special education service for disciplinary violations. (See 34 C.F.R. 300.530(d)(3).)

According to the district, while the student has been allowed to remain in the office or student center when he has come into school upset, he has never been sent to the office as a consequence for inappropriate behavior and he has never been forced to remain in the office because he has arrived at school late.

The school asserts that assignments have not been brought to the office for the student because of the school's fear that doing so would encourage the student to continue to linger in the office rather than going to class. Rather, the school allows the student to calm himself so he can leave the office.

Summary and Conclusions

The student has spent the cumulative equivalent of 9 school days in the office or student center. On those occasions when he makes it to school but refuses to go to class, the student is generally able to calm himself down and move on out to his classes by the end of third hour.

When special education services are not provided for 10 school days if related to a disciplinary action on the part of the school, the loss of those services is not considered to be a change of placement. However, the 9-day loss of education services was not in this case the result of a disciplinary action, nor was the decision to allow the student cool-down time required as a part of a targeted intervention plan in this student's IEP. The time spent in the office typically occurred during the first three hours of the school day when the student might otherwise have been receiving two hours of special education services. Of the 81 class periods missed (9 days at 9 periods per day) as many as 50 could have been special education service hours delivered through the student's adapted core classes. Because the school failed to provide special education services during at least some of the time the student spent

in the office or student center, a violation of special education statutes and regulations is substantiated.

Issue Three: The school had at the time the complaint was filed not yet developed an IEP for the student.

Applicable Statutes and Regulations

Districts are required to ensure that an IEP is in effect at the beginning of each school year for each child with an exceptionality (K.S.A. 72-3429(a)(1) and K.A.R. 91-40-16(b)(3)).

Once an IEP has been completed and consent for services has been obtained from the parents, the child's IEP must be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Regardless of whether an individual participates in the IEP meeting, all individuals who are providing education to the child (regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementation of the IEP) must be informed by the IEP team of

1. his or her specific responsibilities related to implementing the child's IEP, and
2. the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP (K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2)).

Parent's Positon

The parent contends that the school has, throughout the 2021-22 school year, failed to develop an IEP for the student. The parent asserts that at a meeting held at the school in October 2021, school staff members were unaware that the student had an IEP but promised to "start working on their IEP services…and get it done by December."

District's Position

The district asserts that an IEP was in place for the student on the first day of the school year. According to the district, an annual review of the student's IEP was conducted in January 2022, and the revised IEP has been implemented.

Investigative Findings

Records provided by the district show that the parent met at the school on October 27, 2021 for an outside agency (KOSP – Kansas Opportunity Support Program) intake update of a therapeutic treatment plan. The student and parent were present as was a family friend who served as translator. The student's outside agency therapist was present as was an agency liaison. Also present were a school counselor who attended only because he had played a role in encouraging the student to come into the building for the meeting. The outside agency staff members were not members of the student's IEP team nor were they responsible in any way for carrying out the student's IEP.

At an IEP team meeting on January 29, 2021, the team developed an IEP which specified the services the student was to receive until an annual IEP review was conducted in January 2022.

That annual IEP review was held on January 27, 2022. The IEP team developed a new IEP for the student which was implemented beginning on that date. The team determined that the student should continue to receive his special education services through "adapted [pull out]" classrooms "without non-exceptional peers" for Mathematics, Social Studies, English Language Arts, and Science. Present levels of performance were updated, and annual goals were revised. The parent was provided with prior written notice of the IEP revisions at the meeting.

The triennial reevaluation of the student was to be conducted during the 2021-22 school year and completed by February 20, 2022. The parent gave her written consent for that reevaluation on December 9, 2021.

However, after learning that the primary language of the home was Spanish, the IEP team determined that additional testing in Spanish was warranted. On January 24, 2022, the school social worker met with the parent and discussed an extension of the 60-school day reevaluation timeline so that additional testing by the school psychologist and speech/language pathologist could be completed in Spanish. According to the extension form, the reevaluation was to be completed by April 29, 2022. The parent gave her consent for the extension on January 24, 2022.

A meeting was held on April 11, 2022 to review the results of the reevaluation. A second meeting, scheduled for April 25, 2022, is intended to focus on the need for possible revisions to the student's IEP based on information collected during the reevaluation.

Summary and Conclusions

While outside agency staff were unaware that the student was receiving special education services, these individuals were not on the student's IEP team nor were they responsible for the implementation of the student's IEP. An IEP had been in place for the student since the first day of the 2021-22 school year. That IEP was revised on January 29, 2022 at an annual IEP review meeting. Further revisions to the student's IEP will likely occur on April 25, 2022 now that the 3-year reevaluation of the student has been completed. A violation of special education statutes and regulations is ***not*** substantiated on this issue.

Issue Four: The school made a DCF (Kansas Department for Children and Families) referral.

The investigator does not have the authority to investigate concerns related to DCF referrals. Therefore, the investigator did not address this issue.

Issue Five: The school has reported the student as truant.

Kansas statutes, at K.S.A. 72-1113(a), require school districts to report students who are not attending school as required by law (i.e., the child is inexcusably absent from school on either 3 consecutive school days, 5 school days in a semester, or 7 school days in a school year) to the Department for Children and Families (DCF) if the student is less than 13 years of age or to the county or district attorney if the student is 13 years old and less than 18 years old.

The investigator does not have the authority to investigate concerns related to mandatory reporting of student truancy. Therefore, the investigator did not address 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 occurred with regard to 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) which require that the district provide a FAPE to students by implementing their IEPs as written.

Therefore, USD #259 is directed to submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with 34 C.F.R. 300.101(a) and 34 C.F.R. 300.17(d) by implementing this student's IEP as written.

While the investigator believes that the student is entitled to compensatory services as a result of the violations identified in this report, the expectation that a student whose chronic absenteeism is well documented would want to spend more time in school seems unrealistic – at least for now. Rather, the corrective actions specified below are intended to ensure that action is taken to address the student's chronic absenteeism in a targeted fashion, setting in place procedures and practices that will guide the school when dealing with the chronic absenteeism of this or any other student.

1) No later than 30 days after the date of this report, USD #259 shall submit to SETS for review and approval a plan developed by the middle school to target and reduce the student's chronic absenteeism and help ensure that the student is provided FAPE. That plan should at a minimum include the following:

    a) The designation of a school-based team assigned to improve this student's attendance. These team members may include but are not limited to member of the student's IEP team;
    b) A Behavior Intervention Plan based upon the results of the FBA conducted during the recent reevaluation;
    c) Intervention techniques for those occasions when the student comes to school but is not immediately able to move on to the classroom;
    d) Dates when the effectiveness of the plan will be reviewed and interventions changed if necessary;
    e) Specific attendance targets for increased attendance so that the school can determine whether strategies are effective;
    f) Strategies for engaging outside agencies involved with the family in a coordinated effort to get the student to school; and
    g) Class schedules for the remainder of the 2021-22 and 2022-23 school year that are designed to minimize disruption to special education services if the student is late getting to school.

2) Further, USD #259 shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.



Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and

a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2)

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #416
ON MAY 16, 2022

DATE OF REPORT: JUNE 14, 2022

This report is in response to a complaint filed with our office by ___ and _____ _____ on behalf of their daughter, _____. For the remainder of this report, _____ will be referred to as "the student." Mr. and Mrs. _____ will be referred to as "the parents." Mrs. _____ will be referred to as "the student's mother," and Mr. _____ will be referred to as "the student's father."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the student's mother on May 26, 2022. On May 20 and June 2, 2022, the investigator spoke via telephone with Dr. Vicki Vossler, Director of Special Education for the East Central Kansas Special Education Cooperative (ECKSEC).

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

- IEP for the student dated November 18, 2021
- Notice of Meeting dated February 22, 2022
- Email dated February 28, 2022 from the parents to the director of the special day school
- Multidisciplinary Staffing Summary dated March 1, 2022
- Notice of Meeting dated March 22, 2022
- Email dated March 23, 2022 from the parents to the director of the special day school
- Email dated March 27, 2022 from the parents to the director of the special day school
- Email dated March 28, 2022 from the director of the special day school to the parents

- Email exchange dated March 30 and 31, 2022 between the parents and the program director of the day school
- Multidisciplinary Staffing Summary dated April 5, 2022
- Multidisciplinary Staffing Summary dated April 5, 2022 amended by the student's mother
- Email dated April 7, 2022 from the parents to the director of the special day school
- Draft IEP for the student dated April 6, 2022
- Email dated April 13, 2022 from the parents to the director of the special day school
- Email dated April 18, 2022 from the director of the special day school to the parents
- Email exchange dated May 9, 2022 between the director of the cooperative and the parents
- Email exchange dated May 13, 2022 between the parents and the director of the cooperative

Background Information

This investigation involves a 7-year-old girl who is enrolled in the second grade. By report of the parent, the student was the victim of a trauma at age two while in a day-care setting and began experiencing significant mental health issues around age 5.

As stated by the parents in their complaint, the student has been diagnosed as having multiple psychiatric disorders including Disruptive Mood Dysregulation Disorder (DMDD), Attention Deficit Hyperactivity Disorder (ADHD) combined type, Anxiety disorder, trauma, and stressor-related disorder.

The student receives services through the Kansas HCBS (Home and Community Based Services) Serious Emotional Disturbance (SED) Waiver which makes her eligible for Medicaid physical and behavioral health services.

The family moved into the district in March of 2021, and the student was placed by the district in a special day school program due to the severity of her emotional and behavioral needs. Her symptoms and behaviors continue to significantly impact her availability for education on a daily basis.

The parents report that when the student was discharged from an inpatient stay in a psychiatric unit in January of 2022, it was recommended that the student attend an intensive outpatient program. The student was placed on a waitlist for a Psychiatric Residential Treatment Facility (PRTF) services in January 2022.

The student missed the last week of the school year because she was placed in inpatient acute care in a PRTF.

Issues

In their complaint and subsequent amendment, the parents identify five concerns. A sixth concern was subsequently added.

Issue One: The district has failed to provide prior written notice (PWN) in response to the parents' requests regarding the provision of FAPE (free appropriate public education) to the students.

Applicable Statutes and Regulations

Prior written notice must be provided to parents when the school refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)).

Parent's Position

The parents assert that the district failed to provide them with written notice of refusal to include changes to the student's IEP that were requested by the parents. Additionally, the parents contend that they were not given written notice of the removal of a speech goal from the student's IEP when a draft document was presented by the special day school on April 5, 2022.

District's Position

The district does not dispute the parents' assertion that they were not provided prior notice of refusal of their requests.

Investigative Findings

On February 22, 2022, notice was sent to the parents regarding a "team meeting" requested by the parents which was scheduled for March 1, 2022. According to the district, the February 22, 2022 meeting was "not an IEP meeting, just mental health sharing w/ school."

However, in a February 28, 2022 email to the director of the day school (copying the student's special education teacher and the school psychologist from the cooperative), the parents specified a number of areas for discussion at the meeting. Included in the email were requests for the following changes to the student's IEP:

- Add a goal for written language;
- Revise the current behavior goals to reflect the unique needs of the student;
- Revise the "Functional Performance" section of the IEP to document parent concern; and
- Provide specificity regarding how sensory activities and breaks would be routinely structured for the student.

In their email, the parents state, "We would also like to request an academic goal added to the IEP [in the area of written language]. It has been documented in multiple ways that [the student] has delays in both fine motor skills and visual processing skills that affect her handwriting and reading abilities…Research shows that handwriting is crucial to the formation of brain networks that support the development of reading skills. Thus, [the student's] poor handwriting skills likely correlate with her reading deficits."

With regard to revisions to behavioral goals, the parents wrote, "We are interested in collaborating with the IEP team in an ongoing effort to develop a highly individualized, therapeutic IEP that best supports [the student's] progress across behavioral, social/emotional & academic goal areas. Goals should be supported by measurable objectives specific to the targeted skills [the student] needs to develop…We request that the main goal constructs of teachable, safe, and respectful each be further defined to include component objectives specific to [the student's] unique needs. I know component skill areas are already being targeted with [the student] such as eliminating physical aggression, staying in her area, being compliant with instructions, and self-monitoring to recognize when she needs a break. We want to be sure the IEP reflects these and any other skill areas of emphasis, and that data is documented to enable thorough evaluation of her progress."

With regard to "Functional Performance" changes requested by the parents, the parents wrote

> "Is it accurate to document that there are no concerns here? That seems contradictory to the information given in the preceding Present Levels section. Could the assessment information from the recent psychological evaluation be included here? We would propose that there are indeed concerns in each of the areas of functional performance listed including concerns related to self-care, specifically her difficulty keeping her face clean that regularly causes a rash and soreness, and difficulty donning her shoes on the correct foot."

In regard to sensory activities, the parents wrote,

> "Under the sensory area, the IEP documents [the student] 'needs a built-in break time to keep herself regulated.' Please specify what this looks like in her day. OT has recommended that [the student] benefits from heavy work and/or gross motor activity breaks before cognitively demanding tasks. This has been discussed with the IEP team previously, but we are not clear on whether this has been implemented."

The March 1, 2022 meeting was attended by the director of the special day school, the student's special education teacher, the school psychologist from the cooperative, the parents, and two case managers for the student from outside agencies.

According to a "Multidisciplinary Staffing Summary" of the meeting, the parents had "requested a team meeting along with ELC staff to review [the student's] plans at [the special day school] and ELC." None of the participants at the meeting were identified as a district representative.

According to the summary, the team discussed a variety of interventions and services to be provided by outside agencies. No changes were made to the student's IEP at the March 1, 2022 meeting.

Another meeting was scheduled for April 5, 2022. At that time, according to the March 1, 2022 meeting summary, the team would, at the next meeting, be updated "on ELC interventions/recommendations and [would] review the items parents emailed on Monday 2/28 to [the director of the special day school]."

On March 23, 2022, the parents sent an email to the director of the special day school (again copying the school psychologist from the cooperative). In their message, the parents wrote, "Please provide Prior Written Notice for the requests articulated in this email and the prior email…sent on February 28, 2022."

The parents sent an email to the director of the special day school on March 27, 2022 in which "additional notes from the [March 1, 2022] meeting" were included. According to the email, the parents had requested that "mental health services/supports (ELC) and related goals be added to the IEP." The parents also wrote that they had "requested that lagging skills be identified that correspond to existing behavior goals."

In an email to the parents dated March 28, 2022, the director of the special day school wrote, "We will be reviewing each of your requests."

The "Multidisciplinary Staffing Summary" for the April 5, 2022 meeting reflects that the "IEP was held at [the special day school]." In attendance were the director of the cooperative, the school psychologist for the cooperative, three case managers for the student from outside agencies, the director of the special day school, the special education teacher, and the parents.

The Multidisciplinary Staffing Summary reflects that the student's IEP was reviewed and amended. A secondary diagnosis was added to the student's IEP. Goals were discussed, and outside agency supports were addressed. Extended school year (ESY) services were, according to the summary, to be reviewed by the district, the cooperative, and the special day school staff.

Some – but not all – of the issues raised by the parents in their February and March emails were addressed. According to the director of the cooperative, she had not been made aware of these earlier emails at the time of the meeting.

In an email to the director of the special day school dated April 7, 2022, the parents requested that the meeting summary be amended to show that, at the meeting, the student's father had made a verbal request for the provision of PWN related to the changes they had requested in their February 22 and March 23, 2022 emails.

On April 13, 2022, the parents sent an email to the director of the special day school stating, "We consent to the revised draft IEP provided to us on 04/05/2022 being implemented, but we continue to identify this IEP as inadequate…Thus, our consent does not mean we agree that this IEP provides a FAPE for [the student]."

Additionally, the parents wrote, "we have asked for Prior Written notice in response to our specific requests and have yet to receive said documentation…If additional communication or meetings are needed to address these issues, please advise us regarding the next steps you propose. Otherwise, we are left to assume that we have reached an impasse with the IEP team on certain items."

The parents outlined a number of reasons they did not believe that IEP proposed by the district was adequate. Included in that list were the following:

- "PLAAFP (Present Levels of Academic Achievement and Functional Performance) section documents no concerns under Functional Performance;
- Behavioral goals are not reasonably achievable or based on [the student's] specific and unique needs;
- Mental health goals and services have not been incorporated into the IEP; and
- 'Built in' and 'scheduled' break times are documented under Accommodations and Modifications and BIP [Behavior Intervention Plan] respectively without specific, descriptive information.

The parents also note that "1 of 2 speech goals had been omitted [from the April 5,2022 draft IEP] without notification or discussion by IEP team. Thus, we do not endorse this change."

With regard to the inclusion of a written language goal, the parents wrote "Written Language section now has an identified impact of exceptionality statement. (Goal requested but not identified.)"

The director of the special day school responded to the parents via email on April 18, 2022 stating, "We will have to meet with [the district] and the special education co-op to address this email. I am waiting on [the director of the cooperative] and [the school psychologist] to let me know when and where they can meet."

By report of the parents, no follow-up meeting was held prior to the filing of their complaint.

At the time the parents filed this complaint, they had not yet been provided with prior written notice regarding denial of any of their requests.

According to the district, the revision of the student's IEP has not yet been completed, and special education services for the student continue to be provided as specified in the student's November 28, 2021 IEP.

Summary and Conclusions

Beginning with an email sent on February 28, 2022, the parents requested changes to the student's November 28, 2021 IEP. Some of the issues raised by the parents were discussed during a team meeting on March 1, 2022, but a properly constituted IEP team was not present, and no changes were made to the student's IEP. While the parents considered the March 1, 2022 meeting to be an IEP team meeting, the director of the special day school did not, asserting that the meeting was held at the request of the parents for the purpose of sharing information about the student's mental health.

An IEP team meeting was held on April 5, 2022. At that meeting, a draft revision of the student's IEP was presented, and some – though not all – of the issues previously raised by the parents were discussed. The draft IEP contained changes to speech/language goals for the student which were not discussed during the April 5, 2022 meeting.

While the parents have told the director of the special day school that they consent to the implementation of the revised IEP despite what they identify as inadequacies, the district asserts that special education services to the student are still being delivered as specified in the student's November 28, 2021 IEP.

Despite ongoing requests from the parents, no prior written notice has been provided by the district regarding the denial of parents' request for changes to the student's November 18, 2021 IEP. While the continued implementation of the student's November IEP renders the parents' contention that they were not given notice of a change in the student's speech/language goals moot, it does not remove the district's responsibility for providing prior written notice of the denial of the parent's request for IEP changes. The parents should expect that, within a reasonable time, the district would – in the context of a properly constituted IEP team meeting – consider the requests that they have made for changes to the student's IEP and that they would be given prior written notice that those changes were either incorporated into the student's IEP ***or*** that the requested changes were denied. In this case, the district has failed to provide the parents with prior written notice that some or all of their requests have been denied, but the student's November 28, 2021 IEP remains unchanged.

Under these circumstances, a violation of special education statutes and regulations *is* substantiated.

Issue Two: The district has failed to provide a sufficiently individualized IEP based upon the student's unique needs.

Applicable Statutes and Regulations

Federal regulations implementing the Individuals with Disabilities Education Act (IDEA), at 34 C.F.R. 300.101, require states to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing within the state. Accordingly, Kansas regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-2(b)(1) require that each school district make FAPE available to each child with a disability residing in its jurisdiction. The federal regulations, at 34 C.F.R. 300.17, define FAPE, in part, as special education and related services provided in conformity with an IEP.

In addition, the school is required to develop an IEP in which services are stated in a manner that is clear to the parents and to all others who are involved in both the development and implementation of the IEP. (See 34 C.F.R. Part 300, Appendix A, Q. 35, Federal Register, March 12, 1999, p. 12479.)

Parents' Position

The parents assert that the student's November 15, 2021 IEP and the draft revision proposed by the special day school on April 5, 2022 lack sufficient accuracy and specificity to ensure the provision of FAPE to the student. According to the parents, the lack of progress shown by the student as reflected in her third quarter monitoring forms demonstrates a need for the revision of her behavior goals and changes to the student's behavior plan. In their proposal for the resolution of this issue, the parents state that the student's IEP "needs to be revised through a collaborative process to ensure that it is adequate for [the student's] educational benefit."

District's Position

The district did not submit a response to this issue.

Investigative Findings

In an email to the director of the special day school dated February 28, 2022, the parents stated that they had reviewed the student's November 18, 2021 IEP "in preparation for [a March 1, 2022] meeting." The parents "identified…the following areas needing further discussion…[and stated that they realized] we won't likely have time to address each of these topics in full during this week's meeting, and that further follow-up will likely be required. We do want to request on record that the following items be addressed by the team as soon as possible."

Among the areas identified by the parents were the following:

Functional Performance:
In their February 28, 2022 email, the parents state that they have concerns related to the student's self-care, specifically her "difficulty keeping her face clean" and "difficulty donning her shoes on the correct foot."

The parents contend that the Functional Performance" section of both the student's November 15, 2021 IEP and the April 5, 2022 draft revision fail to identify any areas of concern and are therefore inaccurate. Both documents indicate "Functional Performance was considered. There are no concerns." However, the parents contend that they have concerns with the student's functional performance in the areas of math, written language, social emotional skills, and motor skills as shown in associated sections of the "Present Levels of Academic and Functional Performance" section of both the November 2021 IEP and the April 5, 2022 draft IEP.

Sensory Area:
The "Accommodations & Modifications" section of both the student's November 5, 2021 IEP and the April 5, 2022 draft state that the student will be provided with a "Sensory Area" in all general and special education courses during tests, written assignments, reading assignments, and classroom activities. According to both documents, this accommodation "will be available for the duration of the IEP year" because the student "needs a built in break time to help keep herself regulated."

The parents contend that this accommodation is "unspecific."

Reading Goal:
The April 5, 2022 draft IEP for the student contains the following reading-related goal:

> "By the end of the IEP year, [the student] will read 100% of the dolch 2nd grade sight words on two consecutive biweekly trials. Currently, [the student] is reading 40% without assistance."

The parents assert that this goal does not reflect a valid grade-level standard and does not provide information regarding how that goal will be addressed. According to the parents, they were told during the April 5, 2022 IEP team meeting that the student has received 1:1 instruction in reading, but do not feel this instruction is reflected in the student's IEP.

Revision of Behavior Goals:

The student's November 5, 2021 IEP contains three behavior-related goals:

- By the end of the IEP year, [the student] will remain teachable (being awake, following directions, and on task) in class with a rate of 95% as measured on the daily point sheet. (According to the IEP, the student has a baseline level of 85%.)
- By the end of the IEP year, [the student] will remain safe (no destruction of property, elopement: leaving assigned area without permission, and express feelings/emotions appropriately) in class with a rate of 89% as measured on the daily point sheet. (The student's baseline level was reported at 79%.)
- By the end of the IEP year, [the student] will remain respectful (using appropriate language, not arguing, and accepting redirection) in class with a rate of 86% as measured on the daily point sheet (with a baseline level of 76%).

Summary and Conclusions

The parents allege that the student's November 28, 2021 IEP and a draft IEP discussed during an April 5, 2022 IEP team meeting are flawed for a variety of reasons and are insufficiently individualized to address the student's unique needs.

Special education statutes and regulations require districts to provide students with FAPE through the implementation of an IEP that has been developed with input from parents in a manner that makes the delivery of services clear to developers and implementers. Statutes and regulations do not require districts to address every need a student might have. Similarly, as addressed under Issue One above, districts are not required to incorporate every parental request into the student's IEP.

The specific concerns identified by the parents under this issue do not in the opinion of the investigator represent violations of special education statutes and regulations.

Although IEP descriptions could always be more precise, this IEP is not legally deficient. With regard to the Functional Performance section, stating that there are no concerns, this appears to clearly be the determination of the IEP team. The fact that the parents disagree does not make this statement inaccurate. With regard to the statement regarding a Sensory Area, the IEP includes an adequate statement of the frequency and duration of this service. It will be provided "in all general and special education courses during tests, written assignments, reading assignments, and classroom activities," and "will be available for the duration of the IEP year." There is nothing "unspecific" about this statement. With regard to the reading and behavior goals, they appear to be individualized to address this specific student and are measurable. As such, they meet the requirements of law. To the extent they have not yet been fully addressed, each of the four concerns specified above should be specifically addressed by a properly constituted IEP team, and parents should be provided with prior written notice that reflects the decision of the IEP team regarding whether or not they will be included/addressed in the student's IEP.

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

Issue Three: The district has failed to provide information to the parents in a timely manner thereby interfering with the parents' opportunity to make informed decisions during the IEP process related to the provision of FAPE to the student.

Applicable Statutes and Regulations

Special education statutes and regulations do not speak specifically to how and when districts must respond to a question from a parent. However, federal regulations, at 34 C.F.R. 300.613, do state that parents must be permitted to inspect and review any educational records relating to their child that are collected, maintained, and used by the agency and must comply with a request from a parent for access to such records without unnecessary delay and before any meeting regarding an IEP.

The Kansas State Department of Education (KSDE) has determined that, unless there is an unusual circumstance, 15 school days is a reasonable time for responding with a Prior Written Notice to any parent's request regarding the provision of FAPE (See KSDE Memo, "Reasonable Time" to respond to parent request for evaluation, January 8, 2002, at https://www.ksde.org./Default.aspx?tabid=614). That "reasonable time" standard is applicable in Kansas to other situations where a timeline for action is not clearly established by law.

There is no requirement in special education statutes or regulations that a draft IEP be provided to parents prior to an IEP team meeting.

Parents' Position

It is the position of the parents that the special day school has not responded in a timely manner to their request for information regarding the student's academic performance, the provision of instruction to the student, and the status of speech/language services to the student. Additionally, the parents assert, that prior to an April 5, 2022 IEP team meeting, they were not provided with a draft of a proposed IEP so that the student's father could have the document available when he participated in the meeting via Zoom. The parents further contend that the district has not provided them with information regarding policies related to the audio recording of IEP team meetings.

District's Position

The district did not submit a position on this issue..

Investigative Findings

In a March 23, 2022 email to the director of the special day school, the parents requested that they be provided with information regarding the student's academic levels and academic progress "in advance of [the student's] next IEP meeting on 04/05/22." Specifically, the parents asked "Has the gap between [the student's] present performance and grade level standards increased or decreased compared to where she ended last year?" According to the parents, this information had not been provided at the time they filed this complaint.

Additionally, the parents wrote, "Our understanding is that [the student] has not been receiving direct instruction from [a specific special educator] this year, and that she has been placed in a smaller classroom with instruction primarily provided by [a paraprofessional]…Is that correct?" Again, the parents state that they had not received a response to their inquiry at the time they filed this complaint.

In an email to the director of the day school dated April 13, 2022, the parents questioned whether he had been able to follow up with the student's speech/language pathologist regarding the student's reluctance to attend her speech sessions unless another student was allowed to join her. The parents asked, "What is the plan to

address [the student's] participation going forward?" According to the parents, they have not gotten a response to their question.

According to the parents, they made a verbal request for a copy of district and/or Cooperative policy regarding the recording of IEP meetings. They also requested a copy of these policies in their April 13, 2022 email. The parents state that they have not been provided with these policies.

Summary and Conclusions

In emails to the director of the special day school, the parents raised four questions related to either the provision of FAPE to the student or to procedural policies and practices of the day school. They assert that they have never been given an answer to any of these questions.

While special education statutes and regulations do not speak specifically on the subject of the management of questions from a parent, these parents should, in the opinion of the investigator, have a reasonable expectation that someone would – in a timely manner – respond to the questions they have posed. While the lack of response from the director of the special day school does not represent a violation of special education statutes and regulations, it does appear to be a part of a larger problem regarding the responsibility for this student and communication with this family which will be addressed through Corrective Actions specified later in this report.

Issue Four: The district denied the parents' request to add related services and goals to the student's IEP to address the impact of the student's mental health on her ability to participate in and benefit from special education and to receive FAPE.

Applicable Statutes and Regulations

As noted above under Issue One, decisions regarding the provision of special education services for exceptional students are to be made by a team of individuals specifically identified and described in state and federal statutes and regulations. For a student who is under age 14 and is not participating in the general education environment, that team is comprised of

- the parents;
- the special education teacher(s) or provider(s) of the child;
- the school representative or designee;

- a person who can interpret instructional implications of any evaluation or assessment results; and
- others who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, and those who are invited by the parents or the school to attend the IEP meeting. (See K.S.A. 72-3404(u).)

If the IEP Team determines that a particular supportive service, which may include a mental health support such as counseling, is necessary to assist an eligible child with a disability to benefit from special education, then the district must provide that service.

Districts must consider the recommendations of an outside agency as presented by the parents of a special education student but are not obligated to implement those recommendations.

Also, as noted above under Issue One, prior written notice must be provided to parents when the school refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)).

Parents' Position

The parents assert that the director of the day school refused their request for the inclusion of a social/emotional goal and counselling services to the student's IEP and declined to work with the student's treatment team from a local behavioral health agency.

District's Positon

It is the position of the district that decisions regarding the provision of special education services requested by the parents of an exceptional child should be made by the IEP team.

Investigative Findings

According to both a notice of meeting form dated February 22, 2022 and a Multidisciplinary Staffing Summary for a March 1, 2022 meeting, the parents requested that special day school staff and Elizabeth Layton Center (ELC) staff come together to review the student's plans "at school…and ELC." According to handwritten notes on the

notice of meeting form provided by the district, this was "not an IEP meeting, just mental health sharing w/ school." The student's special education teacher was present as was the director of the special day school. The school psychologist from the cooperative attended virtually. Case managers for the student from outside agencies were also present for part or all of the meeting.

The summary of the meeting reflects that ELC "would like to replicate hospitalization service pattern and incorporate more mental health services into [the student's] life. [One of the student's case managers] suggested that the student have "more case management activities and therapeutic interventions 1-2 times/month." A second case manager proposed that "[A third case manager] increase service time to meet with [the student] on Mondays and Fridays and will schedule with the special day school." The second case manager also shared there will be some additional attendant care.

On March 27, 2022, the parents sent an email to the director of the special day school which included the parents' "additional notes from the meeting." According to their email, the parents had – at the team meeting – "requested that mental health services/supports (ELC) and related goals be added to the IEP."

On March 30, 2022, the director of the day school sent an email to the parents stating

> "One of the things we will be discussing in our IEP meeting next week [on April 5, 2022] is your request for ELC's [Elizabeth Layton Center – a local behavioral health agency] involvement in [the student's] goals. I know you were planning on some of ELC's staff attending the meeting if they were able to. It is important to understand that [the day school] staff are not qualified to provide mental health services much like ELC staff is not the educational provider for [the student]. We are happy to work with ELC staff so that [the student's] plan (therapeutic and educational) are complementary; however, it is not a function of the IEP and it is important that the two plans remain separate. We will be happy to review goals related to academics and behaviors, but I want you to know this before next week."

The parents responded via email on March 31, 2022, writing

> "We understand that you are denying our request to add mental health services and goals to [the student's] IEP.

> Please clarify whether you are also declining collaboration with ELC on how IEP behavioral goals are revised/developed (as discussed at the last IEP meeting)? [The student's] mental health issues directly interfere with her academic and interpersonal success at school. [The student's] presentation of emotional needs is complex. Her behavioral challenges are a direct manifestation of her diagnosed mental health issues. For example, [the student's] psychiatrist identified today that [the student's] behavioral challenges Tues almost certainly correlated with anxiety activated by the video content shared in class Monday. She recommended counseling services be available to [the student] during the day to address these feelings and the resultant problematic behaviors,
>
> [The day school's] capacity to provide mental health services and supports does not determine [the student's] level of need. And it is her level of need that should determine what special education and related services are provided. Thus, relevant mental health goals should be identified in her IEP and addressed through related services provided by qualified entities outside of [the day school] staff when necessary.
>
> Unfortunately, per the most recent progress report, [the student] has not made progress this year towards any of the 3 behavioral goals on her IEP. More therapeutic support needs to be provided in order to ensure FAPE.
> We greatly appreciate your willingness to collaborate with ELC thus far. We are grateful for ELC's increased involvement in [the student's] school day and recognize this is a step in the right direction. We are open to suggestions if you have other resources available or have identified other entities with relevant expertise to consult. We are willing to think outside the box to do what is best for [the student] and are asking you to do the same."

The program director responded via email on March 31, 2022 writing

> "Thank you for your reply. We will plan on discussing your concerns in more detail at our meeting…"

Staff from ELC participated in the April 5, 2022 IEP team meeting as did the parents, the director of the cooperative, the director of the special day school, the student's special education teacher, and the school psychologist from the cooperative. The Multidisciplinary Staffing Summary of that meeting does not show that parents made a request to have any specific mental health service added to the student's IEP.

The IEP team discussed referral to outside agencies and how ELC supports could be integrated into the student's program.
On April 7, 2022, the parents sent an email to the director of the special day school which included a request to "amend the minutes from the 04/05/22 IEP Meeting to include the following…

- [The student's father] inquired regarding availability of programs with more intensive emotional and/or behavioral supports. [The director of the cooperative] stated that if [the student] has a need beyond what the educational entity offers, that is a conversation to have with ELC."
- [The director of the cooperative] asked whether [IEP goals established by the special day school] could mirror some of the social emotional goals on [the student's] ELC/SED Waiver treatment plan."

In an email exchange, dated May 9, 2022, the director of the cooperative wrote to the parents, "The reason [the student] was placed in [the special day school] was due to behavioral needs impacting her educational needs. The focus on the behavioral needs is of main concern so that she is able to receive the academic instruction. As mentioned earlier, we are not a mental health facility but want to very much work with the outside agency for the betterment of [the student] and her overall education… If eligibility for ESY is determined, we look forward to collaborating with her mental health providers to provide some intense work."

Summary and Conclusions

Decisions regarding the provision of special education services to an exceptional child are made by a properly constituted IEP team. The meeting of March 1, 2022 was not a properly constituted IEP team meeting as no LEA (district representative) was present. No evidence was presented to show that a request was made by the parents at the IEP team meeting of April 5, 2022 for the provision of any specific mental health services for the student or that the district refused to provide any specific service. While the director of the special day school program had stated in an email to the parents that his staff was not qualified to provide mental health services to the student, that statement from a single member of the student's IEP team did not constitute a denial of service and did not preclude the IEP team from discussing how the mental health needs of the student could be addressed. Both the director of the special day school and the director of the cooperative have explicitly stated a willingness to work with outside parties to address the student's mental health needs. Representatives of the

community mental health agency who work with the student have been invited to and attended team meetings regarding the student.

A violation *is not* substantiated on this issue.

Issue Five: The district's denial of a parental request for the establishment of criteria related to the student's access to the general education environment has impacted her access to the LRE (least restrictive environment).

Applicable Statutes and Regulations

Children with disabilities – including children in day school settings - are to participate with children without disabilities in academic, nonacademic, and extracurricular settings "to the maximum extent appropriate" (K.A.R. 91-40-1). Determinations regarding the "least restrictive environment" (LRE) must be made at least annually, should be based on the student's individualized education program, and should be provided as close to the child's home as possible.

Special education statutes and regulations do not mandate the development of a specific plan for transitioning a student into less restrictive environments.

Parents' Position

According to the parents, they were told at the time the student was first enrolled in the day school that she would be allowed "unconditional visits" to her home school at least quarterly, but that practice is no longer being implemented. The parents assert that while the student handbook for the program states that each student will have a transition plan for returning to his/her home school district, no criteria for return for the student has been developed. Additionally, while a public school near the day school has by report of the parents worked collaboratively with the day school to facilitate general education opportunities for day school students, the student has been denied access to these opportunities "based on the presence of aggressive behaviors." It is the position of the parents that a transition plan for the student should be developed and included in the student's IEP.

District's Position

The district contends that the parents were informed at the April 5, 2022 IEP team meeting of the baseline criteria necessary for the consideration of a transition of the student into a less restrictive setting.

Investigative Findings

The "Participation with Non-Disabled Students in the Regular Education Environment" section of the student's November 18, 2021 IEP shows that when developing the student's IEP, the team considered the LRE for the student.

According to minutes of the IEP Team meeting of April 5, 2022 developed by the parents and sent to the director of the special day school, the student's father requested that a plan for the transition of the student to her home school be established and included in the student's IEP. The parents' summary shows that the director of the special day school stated that a transition plan would not be discussed "as long as [the student has] double digit instances of aggression and there were 11 last week." The minutes reflect that the director also "identified [the student's] refusal to get out of the van, and difficulties with morning procedure and getting to school as issues that preclude development of a transition plan at this time."

Summary and Conclusions

While IEP teams must consider the LRE at least annually, special education statutes and regulations do not require that a specific plan be included into the IEP regarding how a student will be transitioned to a less restrictive environment. Evidence demonstrates that LRE was considered by the IEP team at the time the student's November 18, 2021 IEP was developed and was again considered during the IEP team's discussion of a draft IEP on April 5, 2022. An amended meeting summary developed by the parents shows that the LRE determination was based upon the student's level of aggressive behavior and her difficulty with transitions. A violation of special education statutes and regulations *is not* substantiated on this issue.

Issue Six: The district has failed to address in a timely manner the parents request for a determination of the student's need for extended school year (ESY) services.

Applicable Statutes and Regulations

When the IEP is initially developed or when it is reviewed annually, the IEP team shall consider the need for ESY services in order to ensure the provision of a free

appropriate public education (FAPE) so that the student can make progress toward the goals specified in his/her IEP and to prevent regression which would impede that progress.

The need for ESY is to be decided individually. In Kansas, ESY eligibility does not require that a student first experience regression when predictive data indicate that regression is likely. *Johnson v. Independent School District No. 4 of Bixby,* 921 F.2d 1022 (10th Cir. 1990) directs school districts to first consider "whether the benefits accrued to the child during the regular school year will be significantly jeopardized if [the child] is not provided an educational program during the summer months…"

The IEP team must consider many factors when making ESY decisions regarding a child, including – but not limited to – the following:

- The degree of impairment,
- The degree of regression suffered by the child,
- The recovery time from this regression,
- The ability of the child's parents to provide the educational structure at home,
- The child's rate of progress,
- The child's behavioral and physical problems,
- The availability of alternative resources,
- The ability of the child to interact with nondisabled children,
- The areas of the child's curriculum which need continuous attention, and
- Whether the requested service is extraordinary for the child's condition, as opposed to an integral part of a program for those with the child's condition.

The *Johnson* case specifies that determining whether ESY is needed should be done in consultation with the parents. The IEP team should collect information and relevant data necessary to make an informed decision regarding the child's need for ESY services and should document in the child's IEP such things as the scope of the special education instructional services needed, the goals and objectives that should be addressed, the implementer(s) of ESY services, needed related services, and the need for contracted services.

There may be circumstances wherein the IEP team may not have enough data at the time of the IEP meeting to determine if the child needs ESY services or what those services should be. In these instances, the team should include in the IEP a statement that ESY services were considered and that there was inadequate information at the time of the meeting to make an appropriate decision. The team should also include in

this statement a date later in the school year when more information will be available to reconvene and determine if ESY services are needed and amend the IEP as necessary (34 C.F.R. 300.106).

The parents of a child with an exceptionality have the right to request an IEP meeting at any time to address any lack of progress on the part of the student toward attainment of annual goals or other matters which could include the need for ESY services (K.S.A. 72-34299f)). Decisions regarding a parent's request for changes to a student's IEP should be made in a timely manner by the student's IEP team.

Parents' Positon

The parents assert that no IEP team meeting was convened to discuss their request for reconsideration of the student's need for ESY services.

District's Position

The district stipulates that action was not taken in a timely manner to address the parents' request for reconsideration of the student's need for ESY services. The director of the cooperative also stipulates that procedures regarding how and by whom decisions regarding the student's need for ESY would be made should be developed.

Investigative Findings

The "Anticipated Extended School Year (ESY) sections of both the student's November 18, 2021 and the April 5, 2022 draft IEP include the following statement:

> "The IEP team has enough information to determine that [the student] does not require extended school year services."

The special day school is not open during the summer months. According to the director of the cooperative, when the student's ESY needs were discussed during the November 18, 2021 IEP team meeting, the team felt that the transition to another educational setting for ESY services would be difficult for the student since she does not handle transitions well. Additionally, the student's behavior, as reflected by then-current behavior point sheets, did not suggest that ESY was needed.

In an email to the director of the special day school (copying the school psychologist for the cooperative) dated February 28, 2022, the parents asked, "How is [the need for ESY] being evaluated as we draw close to the end of the school year?" No evidence was provided by the district to show that the parents were given a response to this question, but the topic of ESY was discussed during the April 5, 2022 IEP team meeting. The summary of that meeting notes that "[the director of the cooperative shared about ESY opportunities. She also shared ESY will be reviewed by [the district], [the special day school] staff, and [the cooperative].

In an email to the director of the special day school dated April 18, 2022, the parents note that "the student's IEP states that it has been determined [the student] does not require ESY." However, on May 9, 2022, the parents sent an email to the director of the cooperative, copying the director of the special day school, expressing concerns about the "lack of substantive behavioral progress in the school environment this year" and noting "the recent month of daily sheets and the cumulative data shared last week seem to indicate a possible regression even in behavioral competencies compared to baseline." The parents wrote, "We are curious to know how this trend impacts the decision regarding ESY?"

The director of the cooperative responded via email on May 9, 2022, stating "if in fact [the student] is regressing as you have noted she would be considered for ESY. Those services would need to be determined soon…If eligibility for ESY is determined we look forward to collaborating with her mental health providers to provide some intense work."

On May 13, 2022, the student's mother sent an email to the director of the special education cooperative asking

> "what eligibility procedures and considerations have been applied towards determining whether [the student] will receive ESY services this summer. With only one week remaining in the school year, we are concerned that a timely decision has not yet been made."

The director of the cooperative responded via email on May 13, 2022 stating

> "I wanted to get back with you regarding the ESY criteria. There are four main things we look at and consider. First one is regression, if we see significant drops in scores/data compared to same age peers could be reason for ESY. We also look at how long does it take to recoup skills that the student has already

shown mastery. We also consider the complexity of the disability and the severity of the disability in terms of grade level behind same age peers."

The parents wrote back to the director of the cooperative on May 13, 2022 stating

> "We are aware of the considerations that go into the decision from the school's side but are also aware that the IEP team is to work in collaboration with the parents in these decisions. This clearly has not been the case nor is this being done in a timely manner to allow us to plan to appeal the decision or make care arrangements for [the student]."

The director of the cooperative responded on the same date, writing

> "This is a conversation with the IEP team. I have not been a part of the IEP team, I have attended one meeting so really I am not the one to make the decision. If the decision is made for ESY, I would be a part of the process to determine venue and staffing."

The student's mother again responded to the director of the cooperative on May 13, 2022 stating

> "The summary from the 04/05/22 IEP Meeting reflects that you shared the decision regarding ESY for [the student] would be reviewed by [the district, the day school, and the special education cooperative].
>
> Subsequently, [the director of the special day school] communicated to [the student's father] in a phone call last week on 05/03/22 that he is not involved in the ESY decision. He said that decision is up to [the district] and [the special education cooperative].
> Also, [the director of the special day school] sent me an email on 4/21/22 stating the following: All future questions regarding the IEP, PWN, etc. are going to go through the co-op through this eval process. [The director of the cooperative in which the day school is located] has told me to refer you back to her.
>
> I formally started this discussion regarding ESY 11 weeks ago. Item #8 of my email to [the school psychologist] and [the day school principal] on 2/28/22 asked for information on how [the student's] need for ESY would be evaluated prior to the end of the school year.

…The need for action regarding ESY has been communicated multiple times to multiple people. Yet it seems to be falling through the cracks of this educational system…

We need clarity on the following by Monday, please:

1) Which entity [the district, the day school, the special education cooperative] currently holds primary responsibility for developing [the student's] IEP?
2) Who serves as the LEA representative on the IEP team?
3) Who will be responsible for gathering data to make an ESY determination and how will this process be expedited?
4) How will this information be shared with the parents in a timely manner?
4) (sic) When will a meeting be scheduled to review this data in consultation with the parents for the purpose of making a decision regarding [the student's] eligibility for ESY and her educational needs?
4) What is the timeline for each step of this process through the final decision?

During the last week of the school year, the student was placed in a PRTF. Upon her release from the facility, it was recommended that she enter the Intensive Outpatient Services (IOP) in another facility outside of the student's home district – the only IOP program in the area serving the student's age group. The program operates Mondays through Thursdays from noon to 3:00 PM. The parents and the director of the cooperative have discussed the student's need for transportation from her home to the program and back home. The director of the cooperative told the investigator in a telephone conversation on June 2, 2022 that the district is willing to support the student's transportation to and from the program.

Summary and Conclusions

In an email to the director of the special day school dated February 28, 2022, the parents began asking about ESY services for the student. The topic was raised again by the parents at the April 5, 2022 IEP team meeting where, according to the meeting summary, it was determined that the ESY needs of the student would be addressed by the district, cooperative, and special day school staff. However, when asked during the month of May 2022, the director of the special day school told the student's father that decisions regarding ESY were up to the student's home district and the cooperative. The director of the cooperative properly stated in an email to the parents on May 13, 2022 that ESY decisions were made by the student's IEP team. However, no IEP team meeting was ever convened to address the parents' specific questions and concerns regarding the student's need for ESY services.

Because the district failed to respond in a timely manner to the parents' request for a review of the November 18, 2021 and April 5, 2022 IEP team determinations that the student did not need ESY services, a violation of special education statutes and regulations *is* substantiated on this issue.

General Statement Regarding Responsibility for the Education of the Student

Kansas statutes, at K.S.A. 72-3411, state that a district shall have the authority to enter into cooperative agreements with one or more other school districts for special education and related services or to contract with another school district or another outside agency for the provision of special education and related services to an exceptional child. Any exceptional child educated by any agency outside the district of residence under a contractual agreement is still considered a pupil of the school district contracting for such services.

The student's district of residence is a member of a cooperative that provides special education services to eight unified school districts. That cooperative entered into a contractual arrangement with a separate interlocal agency for the provision of services to the student at a special day school program located outside the student's home district.

During this investigation, it has become evident to this investigator that there has not been a clear understanding between the district, the cooperative, and the special day school regarding how and to whom the parents' questions should be directed. Questions regarding the provision of services to this student have not consistently been brought before a properly constituted IEP team for resolution. While the school psychologist from the cooperative has attended all IEP team meetings, it is not clear that the school psychologist was filling the role of LEA representative at any of those meetings. There has been obvious confusion about which agency was responsible for providing notice of proposed actions to the parents and how decisions regarding ESY services should be made.

The director of the cooperative spoke by telephone with the parents on June 2, 2022 and discussed many aspects of the issues raised in the parents' complaint. The director of the cooperative acknowledges that the agencies must work together to clearly define roles and responsibilities for the provision of services to this student. To that end, the agencies will collaboratively conduct training in the Fall of 2022 regarding collaborative problem solving, IEP development, and procedural requirements highlighted by this complaint.

The investigator strongly encourages the cooperative and the special day school to develop explicit decision-making procedures that can help these parents or any other parent of children from the cooperative who are being served at the day school through a contractual agreement to understand how and by whom their concerns will be addressed.

Corrective Actions

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 occurred with regard to

- K.S.A. 72-3430(b)(2) and 34 C.F.R. 300.503(a)(2) which require that parents be provided with prior written notice when a district refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child; and
- K.S.A. 72-3429(f) which allows parents to request an IEP meeting at any time in order to address any lack of progress toward attainment of annual goals and other matters such as the need for ESY services.

Therefore, USD #416 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 40 calendar days of the date of this report, a written statement of assurance stating that it will comply with

    - K.S.A. 72-3430(b)(2) and 34 C.F.R. 300.503(a)(2) by providing parents with prior written notice whenever the district refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child; and with
    - K.S.A. 72-3429(f) which allows parents to request an IEP meeting at any time to address the student's lack of progress toward the attainment of IEP goalls and other matters such as the student's need for ESY services.

2) By no later than August 5, 2022,

a) Develop, in conjunction with the parents, a list of changes/clarifications requested by the parents with regard to the student's November 28, 2021 IEP, and
b) provide a copy of that list to SETS by no later than August 12, 2022.

3) By no later than August 19, 2022,
    a) Convene an IEP team meeting to discuss each of the concerns identified above under Corrective Action 2a.
    b) If the team determines that changes to the IEP are needed, provide the parents with prior written notice of the proposed change(s), and request the written consent of the parents if proposing any material change in services to or substantial change(s) in the placement of the student.
    c) If the team determines that changes requested by the parents will not be incorporated into the student's IEP, provide the parents with prior written notice of denial of each denied change.
    d) No later than 5 calendar days after the IEP meeting described above in 3)a), USD #416 must provide SETS with a copy of the student's IEP if changes were made, and with copies of all prior written notice documents provided to the parents regarding all changes to the IEP or parental requests for changes that were denied.

4) By no later than August 31, 2022,
    a) develop – in conjunction with the director of the special day school – guidelines for decision-making with regard to the provision of extended school year services to this student, and
    b) submit those guidelines to SETS for review and approval.

5) Further, USD #416 shall, within 10 calendar days of the date of this report, submit to SETS 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 or conclusions in this report by filing a written notice of appeal in accordance with K.A.R. 91-40-51(f)(1). The written notice of appeal may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612. Such notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Diana Durkin

Diana Durkin
Complaint Investigator

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;
(B) the withholding of state or federal funds otherwise available to the agency;
(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #230
ON MAY 5, 2022

DATE OF REPORT JUNE 20, 2022

This report is in response to a complaint filed with our office on behalf of 14 students with disabilities enrolled in the Kansas Virtual Academy (KSVA) by Claire Behrens, a school psychologist.

Because Ms. Behrens is not the parent or legal guardian or educational decision maker for any of the 14 students, written consent from a person serving in this role for each of the 14 students is required in order to share this report with her. In addition, written consent is needed to share the personally identifiable information for each of the 14 students with the other 13 named students in the complaint. For this reason, only the Kansas State Department of Education (KSDE) and USD #230 will receive a non-redacted copy of this report; all other parties will receive a redacted version based on written consent provided on behalf of the 14 students as noted below.

In the remainder of the report, Ms. Behrens will be referred to as "the complainant" and the chart below indicates how each of the 14 students will be referred to in the remainder of the report:

Student Name	Student	Parent provided written consent to release personally identifiable information to the complainant
[redacted]	Student #1	No
	Student #2	No
	Student #3	No

[redacted]	Student #4	No
	Student #5	Yes
	Student #6	No
	Student #7	No
	Student #8	No
	Student #9	No
	Student #10	Yes
	Student #11	No
	Student #12	Yes
	Student #13	No
	Student #14	No

The complaint is against USD #230 (Spring Hills Public Schools) which provides special education services to students enrolled in the KSVA. In the remainder of the report, "USD #230," the "school," the "district" or the "local education agency (LEA)" shall refer to these responsible public agencies.

The KSDE allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, Ms. Behrens initially made the complaint on April 28, 2022 but did not provide notice to the district. The KSDE and USD #230 both received the complaint on May 5, 2022. The 30-day timeline to investigate this complaint was extended until June 19, 2022 to allow the parents of the 14 students named in the complaint the opportunity to be interviewed and provide information relevant to the allegation.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the complainant by telephone on May 19, 2022 and May 23, 2022.

USD #230 made the following school staff available for a telephone interview on May 28, 2022:

- Cindy Dziadosz, Director of Special Services at USD #230
- Cassie Barton, Head of School for KSVA

The parents of the 14 students named in the complaint were also contacted via email and telephone and provided the opportunity to provide information relevant to the allegation as noted in the chart below:

Student	Dates of Emails	Dates of Phone Calls	Date of Interview
Student #1	5/31/22	6/7/22 – left voicemail message	Did not respond
Student #2	5/31/22	6/7/22 – left voicemail message	Did not respond
Student #3	5/31/22	6/7/22 – left voicemail message	Did not respond
Student #4	5/31/22 6/1/22	none	Did not want to be interviewed via email on 5/31/22
Student #5	5/31/22 6/1/22	6/1/22	6/2/22
Student #6	5/31/22	6/7/22 – left voicemail message	Did not respond
Student #7	5/31/22	6/7/22 (texted – no voicemail)	Did not respond
Student #8	5/31/22	6/1/22	6/7/22
Student #9	5/31/22 6/1/22	6/7/22	Did not want to be interviewed via phone call on 6/7/22

Student #10	5/31/22 6/1/22	6/1/22	6/3/22
Student #11	5/31/22	6/7/22 – left voicemail message	Did not respond
Student #12	5/31/22	6/1/22 6/2/22	6/6/22
Student #13	5/31/22	6/7/22	6/10/22
Student #14	5/31/22	6/1/22	6/2/22

It is noted that both the complainant and the LEA provided documentation related to personnel issues and the IDEA does not provide jurisdiction to investigate these types of complaints. Only issues related to alleged noncompliance with the IDEA were investigated as documented in the remainder of the report.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the complainant, the LEA, and parents of the identified students. The following materials were used as the basis of the findings and conclusions of the investigation:

- Formal Complaint Request Form dated April 28, 2022 completed by the complainant
- USD #230 Parent Contact Information for 22FC230-002
- KSVA Student Evaluation List
- Student Specific Evaluation Data Chart
- Behrens Information summary chart for evaluations and Emails
- Email dated January 12, 2022 at 11:09 a.m. written by Ann Smith, Special Populations Teacher at KSVA, to Ms. Behrens
- Email dated February 9, 2022 at 1:13 p.m. written by Mindy Carlson, English Language Coordinator / Special Populations Teacher at KSVA, to Ms. Behrens
- Email dated February 9, 2022 at 7:22 p.m. written by Ms. Behrens to Ms. Carlson
- Email dated February 11, 2022 at 9:13 a.m. written by Ms. Behrens to Jennifer Rodriguez, Special Populations Teacher at KSVA

- Email dated February 11, 2022 at 9:15 a.m. written by Ms. Carlson to Ms. Behrens
- Email dated February 11, 2022 at 11:06 a.m. written by Ms. Carlson to Ms. Behrens
- Email dated February 11, 2022 at 11:51 a.m. written by Ms. Behrens to Ms. Carlson
- Emails dated February 11, 2022 at 12:49 p.m. and 2: 35 p.m. written by Ashley Hopkin, Speech/Language Pathologist, to Ms. Behrens
- Email dated February 11, 2022 at 2:48 p.m. written by Ms. Carlson to Ms. Behrens
- Email dated February 14, 2022 at 7:22 a.m. written by Ms. Behrens to Ms. Carlson
- Email dated February 16, 2022 at 3:47 p.m. written by Ms. Carlson to Ms. Behrens
- *KSDE Eligibility Guidelines – August 2021*
- USD #230 December 1, 2021 Child Count
- KSVA Academic Calendar for school year 2021-22
- Student 1 Documentation
    - Parent Contact Log for the 2021-22 school year
    - Reevaluation Not Needed Form signed by the parent on September 21, 2021
    - Prior Written Notice (PWN) for evaluation and consent dated December 7, 2021
    - PWN for eligibility and special education services dated May 18, 2022
- Student 2 Documentation
    - Parent Contact Log for the 2021-22 school year
    - PWN for evaluation and request for consent initially provided on October 21, 2021 and provided again on March 22, 2022 to add additional assessments
    - Agreement to Extend dated November 16, 2021
    - Agreement to Extend the Evaluation Timeline signed by the parent on March 7, 2022
    - Notice of Meeting (NOM) for May 16, 2022 to Review Evaluation and Determine Eligibility

    - PWN for eligibility and special education services dated May 16, 2022
- Student 3 Documentation
    - Parent Contact Log for the 2021-22 school year
    - Prior Written Notice (PWN) for evaluation and consent initially dated November 18, 2021, provided again on March 22, 2022 to add additional assessments, and provided an additional time on March 30, 2022 to additional assessments
    - Agreement to Extend the Evaluation Timeline signed by the parent on March 9, 2022
    - Evaluation Team Report – Initial Evaluation dated April 28, 2022
    - Meeting Notes dated April 28, 2022
    - PWN for eligibility and special education services dated April 28, 2022
- Student 4 Documentation
    - Parent Contact Log for the 2021-22 school year
    - PWN for evaluation and consent dated September 17, 2021
    - Agreement to Extend the Evaluation Timeline signed by the parent on December 8, 2021 and again on March 24, 0222
    - NOM for May 5, 2022 to Review Evaluation and Determine Eligibility
    - Evaluation Team Report – Reevaluation Requested dated May 5, 2022
    - May 5, 2022 IEP amendment to the IEP dated December 8, 2021
    - PWN for eligibility and special education services dated May 5, 2022
- Student 5 Documentation
    - PWN for evaluation and request for consent dated September 25, 2021
    - PWN for evaluation and consent dated November 18, 2021
    - Agreement to Extend the Evaluation Timeline signed by the parent on December 2, 2021 and again on March 22, 2022
    - Evaluation Team Report – Initial Evaluation dated May 10, 2022
    - PWN for eligibility and special education services dated May 10, 2022
- Student 6 Documentation
    - Parent Contact Log for the 2021-22 school year
    - PWN for evaluation and consent dated November 12, 2021
    - Agreement to Extend the Evaluation Timeline dated December 1, 2021
    - Agreement to Extend the Evaluation Timeline dated March 8, 2022

    - PWN for termination of all special education services, related services, and supplementary aids and services due to parent's revocation of consent signed by the parent on March 15, 2022
- Student 7 Documentation
    - PWN for evaluation and consent dated November 22, 2021 and signed again on March 22, 2022 to add additional assessments for social/emotional, hearing, and vision
    - Agreement to Extend the Evaluation Timeline dated March 8, 2022
    - Evaluation Team Report – Reevaluation dated April 29, 2022
    - Meeting Notes dated April 29, 2022
    - PWN for eligibility and special education services dated April 29, 2022
- Student 8 Documentation
    - Parent Contact Log for the 2021-22 school year
    - Reevaluation Waiver dated December 9, 2019
    - PWN for evaluation and consent dated November 22, 2021 and signed again on March 22, 2022 to add additional assessments
    - Agreement to Extend the Evaluation Timeline dated November 17, 2021
    - Agreement to Extend the Evaluation Timeline dated March 4, 2022
    - NOM for May 16, 2022 to Review Evaluation and Determine Eligibility
    - PWN for eligibility and special education services dated May 16, 2022
- Student 9 Documentation
    - Parent Contact Log for the 2021-22 school year
    - Reevaluation Not Needed Form dated 9/12/19
    - PWN for evaluation and request for consent dated March 11, 2021
    - Agreement to Extend the Evaluation Timeline dated May 19, 2021 and again on November 15, 2021
    - Revocation of consent for evaluation dated February 25, 2022
    - Triennial waiver dated February 25, 2022
- Student 10 Documentation
    - Parent Contact Log for the 2021-22 school year
    - PWN for evaluation and consent dated May 7, 2021
    - PWN for evaluation and consent dated November 12, 2021
    - PWN for evaluation and consent dated December 16, 2021
    - Agreement to Extend the Evaluation Timeline dated March 22, 2022

    - PWN for eligibility and special education services dated April 28, 2022
- Student 11 Documentation
    - Parent Contact Log for the 2021-22 school year
    - PWN for evaluation and consent dated December 15, 2021 and provided again on March 22, 2022 to add additional assessments
    - Agreement to Extend the Evaluation Timeline dated March 23, 2022
    - NOM for May 19, 2022 to Review Evaluation and Determine Eligibility
    - PWN for eligibility and special education services dated May 20, 2022
- Student 12 Documentation
    - Parent Contact Log for the 2021-22 school year
    - PWN for evaluation and consent dated January 7, 2022, and provided again on February 10, 2022, and again on March 22, 2021
    - NOM for April 12, 2022 to Review Evaluation and Determine Eligibility
    - Evaluation Team Report – Initial Evaluation dated April 12, 2022
    - PWN for Identification and Request for Consent dated April 12, 2022
- Student 13 Documentation
    - Parent Contact Log for the 2021-22 school year
    - PWN for evaluation and consent dated November 29, 2021
    - PWN for evaluation and consent dated March 8, 2022
    - NOM for May 19, 2022 to Review Evaluation and Determine Eligibility
    - PWN for Identification and Request for Consent dated May 19, 2022
- Student 14 Documentation
    - Parent Contact Log for the 2021-22 school year
    - PWN for evaluation and consent dated February 11, 2022
    - PWN for evaluation and consent dated March 22, 2021
    - Agreement to Extend the Evaluation Timeline dated January 6, 2022
    - IEP Amendment Between Annual IEP Meetings dated May 16, 2022
    - Agreement to Extend the Evaluation Timeline dated March 23, 2022
    - NOM for May 13, 2022 to Review Evaluation and Determine Eligibility
    - PWN for Identification and Request for Consent dated May 13, 2022

Background Information

USD #230 offers parents and students the choice of enrolling in the school district in either an in-seat or an online setting. The Kansas Virtual Academy (KSVA) is the full

time online public school for students in kindergarten through sixth grade. All online students work in grade level curriculum through the Stride K-12 curriculum with the accommodations identified in their IEPs. This investigation involves 14 students enrolled in KSVA who were evaluated for special education during the 2021-22 school year.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the complainant raised one issue that was investigated.

> ISSUE ONE: The USD #230, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate evaluation procedures during the past 12 months, specifically providing parents with their procedural safeguards, including the parent in the Review of Existing Data, and conducting the required triennial reevaluations.

Positions of the Parties

The complainant reported that she was contracted by USD #230 to conduct both initial and triennial special education evaluations for students enrolled in KSVA during the 2021-22 school year. In conducting the evaluations and talking to the parents, the complainant found multiple triennial reevaluations that were overdue and well beyond the three-year timeline. She also noted that parents were reporting to her that they were not involved in the Review of Existing Data (RED) to determine if additional assessment data were needed and, if additional data was needed, not being involved in determining the areas to be assessed in order to determine initial or continued eligibility for special education and related services. The complainant also noted that the parents did not seem to be aware of their procedural safeguards guaranteed in the Individuals with Disabilities Education Act (IDEA). The complainant believes USD

#230 did not fulfill its obligation in regards to following the required special education evaluation procedures during the 2021-22 school year.

The Director of Special Education and the KSVA Head of School acknowledged difficulty finding and keeping appropriately credentialed staff to conduct the special education evaluations. USD #230 reported ongoing recruitment efforts both locally and regionally. Ms. Behrens, who lives in Colorado, was contracted by USD #230 as a school psychologist to provide virtual assessments during the second semester of the 2021-22 school year but was terminated by the district in March 2022 due to performance issues.

School staff reported that parents are provided procedural safeguards annually as well as when a referral for a special education evaluation is made by either the parent or school district staff. School staff communicated regularly with parents during the evaluation process to obtain existing data and, when an evaluation was delayed due to staffing issues, the school staff obtained written consent from the parent to extend the evaluation timeline. USD #230 believes that it follows state and federal regulations regarding the evaluation process and the provision of the procedural safeguards as required by the IDEA.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the complainant, LEA staff in USD #230 and interviews with seven of the 14 parents of the named students.

USD #230 staff reported that their procedure and practice is to provide a copy of the procedural safeguards at every annual IEP team meeting and upon the initial referral for a special education evaluation. In addition, USD #230 includes a procedural safeguards statement in every notice of meeting (NOM) and prior written notice (PWN) form provided to parents of students suspected of or identified as having a disability that states,

> Both state and federal laws concerning the education of children with exceptionalities include many parental rights. Receiving notices of action

> the school wants to take in regard to your child and being a part of your child's educational planning team are examples of your rights.
>
> These laws also require that the school follow certain procedures to make sure you know your rights and have an opportunity to exercise those rights. The school is required to give you a copy of the rights of a parent at least one time each school year.

Both of these forms also notify the parents of how to obtain additional copies and resources for answering any questions or obtaining additional information about the procedural safeguards document. The PWN form for evaluation and consent also states that parents are provided with a copy of the Procedural Safeguards upon the initial referral for a special education evaluation. Documentation showed that the parents of all 14 named students received at least one of these forms during the past 12 months.

USD #230 has also posted a copy of the *Kansas State Department of Education Parent Rights in Special Education (procedural safeguards)* on the Special Education webpage of the district's website to provide parents with access to this information.

Five of the seven parents interviewed reported receiving copies of the procedural safeguards via email or at the IEP team meetings. One parent did not recall receiving a copy but acknowledged they were provided with PWN which included the procedural safeguards statement.

On February 11, 2022 at 9:13 a.m., Mrs. Behrens sent an email to Ms. Rodriquez asking,

> Also, a general question for all: for most DDs [Developmentally Delayed] I have the assignment to just do academic assessments yet, if we do not know what the student might qualify for, how do we chose that it is only an academic assessment that he needs? I held a parent interview while scheduling one of our upcoming DD kids, and from what mom reported, it seems like he has autism or should be tested for it, yet I only have the academic portion. This results in a reevaluation before time comes. Please let me know how to handle this. Other DD students have other concerns as well (such as ADHD) but that does not seem to be addressed in the PWN.

Ms. Carlson replied to Ms. Behrens in an email on February 11, 2022 at 9:15 a.m. explaining that "In Kansas, Autism is a medical diagnosis like dyslexia and ADHD, we do NOT specifically test for these categories." At 11:06 a.m. that same day, Ms. Carlson again emails Ms. Behrens and states,

> We really appreciate you noticing these additional areas of concern with the students during your sessions with them. If you provide us with a list of the students' names and grades, we can update the PWN consent form and get parent consent to evaluate in the additional areas you recommend.

In an email dated February 11, 2022 at 11:51 a.m., Mrs. Behrens responded to Ms. Carlson stating,

> For KSVA, I am evaluating students based on an assignment sheet/ PWN / parental consent. The information I am missing to put the pieces together is why am I evaluating only the areas assigned there? Let me give you an example, I assessed a 10 year old male only in the academic area. During the assessment, his attention and lack of self-regulation were severe to the extent where I see some of the academic low scores were the result of this. Whether or not he has a medical diagnosis of ADHD [Attention Deficit Hyperactivity Disorder], I do not know, yet I would opt to give him a Conners 3 (ADHD assessment) or a BASC-3 [Behavior Assessment System for Children] (social emotional assessment) to corroborate my hypothesis and have enough data to back up the low score, and most importantly, be able to provide recommendations and accommodations that suit his needs. Another DD kid also has only academics assigned, yet coming out of that DD eligibility and based on parent's info of how he works and what I could be expecting in terms of stamina, focus and some other concerns the parent voiced, it is most likely that he could score high/elevated if I gave him an autism assessment. But I am only administering an academic assessment. I am not tackling the issue. Without further data, I am not able to qualify the student. I am missing information.

Ms. Carlson sent Ms. Behrens an email dated February 11, 2022 at 2:48 p.m. informing her that the parent of student #1 had provided written consent to add the areas of general intelligence and social/emotional to the current reevaluation. Ms. Behrens responded on February 14, 2022 at 7:22 a.m. stating,

> I am not concerned about his general intelligence, neither do I think I should or could test him. The child is untestable because of his severe autism. He bounces around the room and cannot concentrate. He is able to read a few words and is infatuated in spelling everything out, but I could not get him to test academically. So preferably let's remove the general intelligence and just have the parent fill out a social emotional [rating scale]. I will report that his inability to test is a manifestation of his condition but I was not able to get any scores. During informal conversations you can "informally" pick up that he does not have a cognitive impairment. The sensory overload does not allow him to focus and has a few medical conditions that do not play well in his life either.

An email dated February 16, 2022 at 3:47 p.m. written by Ms. Carlson to Ms. Behrens notified her that the parents of student #13 requested additional areas of assessment be added to the current reevaluation being conducted. The parents initially signed consent for the reevaluation on November 29, 2021 and, as a result of the parent's request for additional assessment on February 16, 2022, a second PWN for evaluation and consent was provided and signed by the parents on March 9, 2022.

The following charts show the evaluation timeline for each of the 14 named students that are based upon a review of documentation as well as interviews with the complainant, LEA staff in USD #230, and seven of the parents of the 14 named students.

Students Receiving Reevaluations

Student	Disability category (primary) at time of required reevaluation	Date of previous evaluation and reason for reevaluation	Parent participated in RED	Date of PWN for consent to evaluate	Date of consent to extend evaluation timeline	Date of PWN of eligibility and # of school days between consent and eligibility	Parent provided procedural safeguards

1	Developmental Delay 10 years old on 11/23/24	Evaluation waived 9/21/21 Teacher referral 12/7/21	Parent Contact Log for 8/24/21 and 12/7/21	12/7/21	---	5/18/22 93 school days	Referenced to in PWN
2	Other Health Impairment	12/19/18 Triennial due 12/18/21	Parent Contact Log for 2/11/22 and 2/22/22	10/7/21 and 3/22/22 to add additional areas for evaluation	11/16/21 and 3/7/22	5/16/22 (Triennial was due 12/18/21)	Referenced in PWN and NOM
4	Speech and Language Impairment	2/20/20 Parent request 9/17/22	Parent contact log for 8/20/21, 9/1/21, 9/17/21, 10/20/21, 3/22/22, and 4/13/22	9/17/22 and 2/2/22 to add additional areas for evaluation	12/8/21 (53 school days) and 3/24/22 (51 school days)	5/5/22 (30 days) 134 school days with two acceptable extensions	Referenced in PWN and NOM
6	Developmental Delay 10 years old on 1/4/22	Evaluation waived 1/7/20 Teacher referral 11/12/21	Unknown	11/12/21	12/1/21 and 3/8/22	Revoked consent for all special education services on 3/15/22 No longer eligible for Developmental Delay as of 1/4/22	Referenced in PWN
7	Developmental Delay 10 years old on 6/18/22	2/18/20 Teacher referral 11/22/21	Unknown	11/22/21 and 3/22/22 to add additional areas for evaluation	3/8/22 (57 school days)	4/29/22 (31 school days) 88 school days with one acceptable extension	Referenced in PWN
8	Other Health Impairment	Evaluation waived 12/9/19	Parent contact log for 3/9/21, 8/12/21,	8/12/21 and 3/22/22 to add additional	11/17/21 (56 school days) and	5/16/22 (44 school days)	Referenced in PWN and NOM

		Parent request 8/12/21	8/25/21, and 4/4/22	areas for evaluation	3/4/22 (57 school days)	157 school days with two acceptable extensions	Parent reported receiving a copy
9	Learning Disability	9/12/19 Parent request 3/11/21	Parent contact log for 2/24/22 and 2/25/22	3/11/21	5/19/21 (44 school days) and 11/15/21 (54 school days)	98 days with two acceptable extensions ending in a triennial waiver agreed to by the parent and LEA on 2/25/22	Referenced in PWN and NOM Parent reported receiving a copy
10	Speech / Language Impairment	9/19/18 Parent refused evaluation 5/7/21 Parent request 11/2/21	Parent reported sharing areas of concern when making referral for reevaluation Parent contact log for 11/2/21, 11/11/21, 2/3/22, and 4/8/22	11/2/21 and 12/16/21 to add additional areas for evaluation	12/16/21 and 3/22/22	Parent revoked consent for evaluation 4/28/22 and only agreed to continue speech / language services but no documentation of a PWN to the parent refusing to conduct the reevaluation because of lack of parent consent or a triennial waiver for either 5/7/21 or 4/28/21	Referenced in PWN Parent does not remember receiving a copy
11	Developmental Delay 10 years old on 10/16/24	4/18/19 Teacher referral 12/15/21	Parent contact log for 1/7/22, 2/8/22, 2/10/22, 4/25/22, and 4/27/22	12/15/21 and 3/22/22 to add additional areas for evaluation	3/23/22 (47 school days)	5/20/22 (40 school days) 87 school days with one acceptable extension	Referenced in PWN and NOM
13	Developmental Delay 10 years old	3/4/19 Due 3/3/22	Parent reported sharing areas of	11/29/21 and 3/9/22	---	5/19/22 40 school days	Referenced in PWN and NOM

	on 3/8/26	Parent and Teacher referral 11/29/21	concern when teacher shared concerns and making referral for reevaluation Parent contact log for 11/23/21, 12/6/21, 12/14/22, 2/22/22, and 3/8/22	to add additional areas for evaluation			Parent reported receiving a copy
14	Developmental Delay 10 years old on 8/9/21	Evaluation waived 12/4/19 Teacher referral 3/22/21	Parent does not remember providing input into RED Parent contact log for 1/6/22, 2/11/22, and 2/22/22	3/22/21 and 2/11/22 to add additional areas for evaluation	5/16/21 and 1/10/22 and 3/4/22	5/13/22 No longer eligible for Developmental Delay as of 8/9/21	Referenced in PWN and NOM Parent reported receiving a copy

Students Receiving Initial Evaluations

Student	Type of referral	Date of referral	Parent participated in RED	Date of PWN for consent to evaluate	Date of consent to extend evaluation timeline	Date of PWN of eligibility	Parent provided procedural safeguards
3	Parent	11/18/21	Parent contact log for 10/12/21, 11/16/21 and 3/9/22	11/18/21 and 3/27/22 to add additional areas for evaluation	3/9/22 (60 school days)	4/28/22 (29 school days) 89 school days with one	Referenced in PWN

				and 3/30/22 to add additional areas for evaluation		acceptable extension	
5	Parent	9/21/21	Parent reported sharing areas of concern when making initial referral Parent contact log for 9/8/21, 11/17/21, 12/1/21, 2/11/22, 3/4/22, 3/21/22, and 4/14/22	9/25/21 and 11/18/22 to add additional areas for evaluation	12/2/21 (44 school days) and 3/22/22 (54 school days)	5/10/22 (35 school days) 133 school days with two acceptable extensions	Referenced in PWN and NOM Parent reported receiving multiple copies
12	Speech Impaired LEA treated as an initial evaluation even though the student was already eligible for special	Initial evaluation completed in spring 2021 for speech and then the teacher made a referral for academic concerns	Parent reported sharing areas of concern when teacher shared concerns and made referral for evaluation Parent contact log	1/7/22 and 2/10/22 to add additional areas for evaluation and 3/22/22 to add additional areas for evaluation	---	4/12/22 59 school days	Referenced in PWN and NOM Parent reported receiving a copy

	education services	on 3/22/21 Parent referral 1/7/22	for 1/7/22, 1/12/22, 2/9/22, 3/7/22, 3/8/22, and 4/1/22				

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R.300.504 (a) require school districts to make the procedural safeguards available to parents and to provide a copy of the procedural safeguards to the parents of a child with a disability at least one time each school year. In addition to the annual provision, a copy of the procedural safeguards must be provided upon the referral or parent request for an initial special education evaluation, upon the first receipt of a request for dispute resolution, in accordance with discipline procedures, and upon parent request. Federal regulations implementing the IDEA at 34 C.F.R.300.504 (b) allow school districts to place a copy of the procedural safeguards on the district's website in order to make this information accessible to parents.

In this case, interviews and documentation show that USD 230 has procedures and practices in place to provide parents with access to the procedural safeguards as required by the IDEA. The parents of six of the 14 named students reported receiving the procedural safeguards at the annual IEP team meeting. In addition, forms used by the district to provide prior written notice as well as to schedule IEP meetings both include a statement about the procedural safeguards, how to obtain a copy, and resources for questions or additional information. It is noted that the parents of all 14 named students received at least one of these forms during the past 12 months. Also, the *Kansas State Department of Education Parent Rights in Special Education (procedural safeguards)* is available to parents through the Special Education webpage of the district's website.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated because USD #230 did make the procedural safeguards available to parents of children with disabilities during the past 12 months.

Federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1) require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. This review of existing data may be conducted either with or without holding a meeting.

On the basis of that review and input from the child's parents, federal regulations implementing the IDEA at 34 C.F.R. 300.305(a)(2) require school districts to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum.

In this case, six of the parents of the 14 named students reported sharing information regarding concerns with school staff prior to the provision of the first PWN for written consent to conduct an evaluation and the Parent Contact Logs showed three additional parents were contacted by the case manager to discuss the reevaluation prior to the PWN requesting consent for the evaluation being provided. However, the district did not provide any documentation showing that it was the IEP team, including the parent, who were the group qualified individuals who identified what additional data, if any, was needed to be collected during the evaluation process. The Parent Contact Logs showed the parents of students #2, #7, #9, #11, and #14 were provided with a PWN for consent for evaluation before an evaluation was ever discussed with them by school staff.

Emails between the complainant and school staff show that recommendations regarding the areas to be assessed during the evaluation were unilaterally recommended by either the school staff or the complainant without input from the

parent of the student #1. Documentation and interviews also found that USD #230 sought written consent for additional areas to be assessed on 15 separate occasions for 11 of the 14 named students during the past 12 months which suggests that the review of existing data process did not include all of the relevant team members, including the parent, resulting in an unreliable and inefficient method for determining the areas to be assessed to determine eligibility based on any suspected disabilities.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to appropriately conduct reviews of existing data, including the parent, to identify what additional data are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP;2 and to participate, as appropriate, in the general education curriculum during the past 12 months.

Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

Federal regulations implementing the IDEA at 34 C.F.R. 300.301(c)(1) require that initial evaluations be conducted in accordance with the timeline established by each state. State regulations at K.A.R. 91-40-8(f) requires that the initial evaluation process or the reevaluation process must be completed within 60-school-days of receiving written parent consent to conduct assessments unless the school district can justify the need for a longer period of time or has obtained written parent consent for an extension of time.

Federal regulations implementing the IDEA at 34 C.F.R. 300.303(b)(2) also require school districts conduct a reevaluation at least once every three years unless the parent and the school district agree that a reevaluation is not necessary.

Federal regulations implementing the IDEA at 34 C.F.R. 300.300(a) and 34 C.F.R. 300.300(c) allow parents the right to refuse consent for a reevaluation. However, the school district may, but is not required to, pursue the reevaluation by using dispute resolution procedures including mediation or due process in order to obtain agreement. The school district is not in violation of the IDEA if it chooses not to pursue consent for the reevaluation.

In this case, the interviews and documentation showed that only six of the 11 reevaluations were appropriately completed within the required timelines. The reevaluation for student #1 took 93 days with no acceptable extension. The triennial evaluation for student #2 was required to be completed no later than December 18 2021 but was actually completed on May 16, 2022. The reevaluation for student #6 was due prior to his tenth birthday because he would no longer meet the eligibility criteria to be identified under the disability category of Developmentally Disabled as of January 4, 2022 and the parents gave written consent for the reevaluation on November 12, 2021. The parent of student #6 subsequently consented to an extension to the evaluation timeline on December 1, 2021 and again on March 8, 2022; however, the parent revoked consent for all special education services on March 15, 2022 and USD #230 appropriately provided PWN to the parent regarding that decision. The triennial evaluation for student #13 was required to be completed no later than March 3, 2022 but was actually completed on May 19, 2022. The reevaluation for student #14 was due prior to his tenth birthday because he would no longer meet the eligibility criteria to be identified under the disability category of Developmentally Disabled as of August 9, 2021 and his reevaluation was actually completed on May 13, 2022. Despite this identified noncompliance with the evaluation timelines, USD #230 did continue to provide the same level of special education and related services until the required reevaluations of these student could be completed.

Only one of the three initial evaluations was completed within the 60 school-day-timeline; the other two initial evaluations were extended with parent consent because the district needed additional areas to be assessed in order to determine eligibility for special education and related services. While these extensions were appropriately obtained, they ultimately resulted in a delay in the development and implementation of appropriate IEPs for 29 days for student #3 and for 53 days for student #5.

The triennial reevaluation for student #10 was required to be competed no later than September 19, 2021 and the district provided the parent with a PWN proposing a reevaluation and requesting consent but the parent refused to grant consent for the reevaluation on May 7, 2021. At that point, USD #230 had three options for responding to the parent's refusal: 1) providing the parent with a PWN refusing to conduct the proposed reevaluation due to lack of parent consent or 2) seeking an agreement with the parent that the triennial evaluation should be waived or 3) using dispute resolution procedures such as mediation or due process to reach an agreement in regards to the proposed reevaluation. USD #230 provided no documentation of showing how the district responded to the parent's refusal to grant consent to the proposed reevaluation on May 7, 2021.

The parent of student #10 subsequently requested a reevaluation of the student and USD #230 appropriately responded by providing the parent with PWN for a reevaluation and obtaining consent on November 2, 2021. On December 16, 2021 and again on March 8, 2022, the district appropriately obtained consent for extensions. On April 28, 2022, the parent revoked consent for the reevaluation and, again, there is no documentation to show how the district responded to the parent's revocation of consent for the reevaluation proposed by USD #230 on November 2, 2021.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to follow the appropriate evaluation procedures in regards to conducting reevaluations within appropriate timelines during the past 12 months. In addition, a violation of special education statutes and regulations is substantiated for failing to provide the parent with appropriate PWN when the school district has proposed a reevaluation and the parent has refused to grant consent for that reevaluation as well as when the school district has proposed and obtained consent for a reevaluation and the parent subsequently revoked consent for that reevaluation during the past 12 months,

Federal regulations implementing the IDEA at 34 C.F.R. 300.306 (a)(1) require that a group of qualified professionals and the parent of the child determines whether the child is a child with a disability as defined in 34 C.F.R. 300.8.

Federal regulations implementing the IDEA at 34 C.F.R. 300.8 (a) and state regulations at K.A.R. 91-40-1(k) indicates that a "child with a disability" means a child who is

evaluated and found to meet the eligibility criteria as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in the IDEA as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, because of the disability, is in need of special education and related services.

Federal regulations implementing the IDEA at 34 C.F.R. 300.8 (b) and state regulations at K.A.R. 91-40-1(k) also define a "child with a disability" as one who is aged three through nine who is experiencing developmental delays as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, because of the disability, is in need of special education and related services.

The *KSDE Eligibility Indicators – August 2021* provides guidance to school districts on making eligibility determinations following the completion of a special education evaluation. The guidance specifically states that a medical diagnosis of autism would be considered information supporting eligibility under the category of autism; however, a diagnosis is not required, nor necessarily determinative, in the decision regarding eligibility under the category of autism. The guidance also states that only children between the ages of three and nine can be eligible under the category of developmental delay.

In this case, student #6 and #14 were no longer eligible to be identified for the disability category of Developmentally Delayed as of their 10th birthdays; however both students continued to receive special education and related services beyond the age of 10 because the reevaluations proposed by USD #230 had not yet been completed as of their 10th birthdays.

In addition, USD #230 provided incorrect information to the complainant in regards to the eligibility criteria for the disability category of autism. In an email dated February 11, 2022 at 9:15 a.m. Ms. Carlson stated, "In Kansas, Autism is a medical diagnosis like dyslexia and ADHD, we do NOT specifically test for these categories." Yet, autism is one of the disability categories recognized by the IDEA and the *KSDE Eligibility Indicators*

– *August 2021* specifically states that "a medical diagnosis of autism would be considered information supporting eligibility under the category of autism; however, a diagnosis is not required, nor necessarily determinative, in the decision regarding eligibility under the category of autism."

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to follow the appropriate evaluation procedures in regards to the identification of students having or suspected of having a disability and in need of special education and related services during the past 12 months, specifically for the categorical disabilities of autism and developmental delays .

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a) which require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. This review of existing data may be conducted either with or without holding a meeting.

   In this case, USD #230 was not able to document that the parents of six of the 14 named students were given the opportunity to share information with school staff prior to the provision of the first PWN

proposing a special education evaluation and requesting consent. USD #230 also sought written consent for additional areas to be assessed on 15 separate occasions for 11 of the 14 named students during the past 12 months which suggests that the review of existing data process did not include all of the relevant team members, including the parent. Two of the students receiving initial special education evaluations had the evaluation timeline extended beyond the 60-school days because of extensions to conduct additional assessments. The eligibility determination for student #3 took 89-school-days and took 113-school-days for student #5.

B. Federal regulations implementing the IDEA at 34 C.F.R. 300.301(c)(1) which require that initial evaluations be conducted in accordance with the timeline established by each state and State regulations at K.A.R. 91-40-8(f) which require that the initial evaluation process or the reevaluation process must be completed within 60-school-days of receiving written parent consent to conduct assessments unless the school district can justify the need for a longer period of time or has obtained written parent consent for an extension of time.

   In this case, one of the required 11 reevaluations were not completed in accordance with the requirements of the IDEA. The reevaluation for student #1 took 93 days with no acceptable extension.

C. Federal regulations implementing the IDEA at 34 C.F.R. 300.303(b)(2) which require school districts to conduct a reevaluation at least once every three years unless the parent and the school district agree that a reevaluation is not necessary.

   In this case, two of the required 11 reevaluations were completed more than three years from the date of the previous special education evaluation. The triennial evaluation for student #2 was required to be completed no later than December 18, 2021 but was actually completed on May 16, 2022 and the triennial evaluation for student #13 was required to be completed no later than March 3, 2022 but was actually completed on May 19, 2022.

D. Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) which require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

   In this case, USD #230 initially proposed a reevaluation of student #10 prior to the required triennial reevaluation date and the parent of student #10 refused consent for that proposed reevaluation on May 7, 2021. However, there is no documentation showing that USD #230 provided the parent with appropriate PWN refusing to conduct the proposed reevaluation due to lack of parent consent. Subsequently, the parent of student #10 requested a reevaluation on November 2, 2021 and consented for two extensions in the evaluation timeline. Subsequently, the parent revoked consent for that proposed reevaluation on April 28, 2022 and again, there is no documentation to show USD #230 provided the parent with appropriate PWN for refusing to conduct the proposed reevaluation due to the parent revoking consent to conduct that proposed reevaluation.

E. Federal regulations implementing the IDEA at 34 C.F.R. 300.8 and state regulations at K.A.R. 91-40-1(k) which indicate that a "child with a disability" means a child who is evaluated and found to meet the eligibility criteria as having autism or developmental delays.

   In this case, USD #230 failed to evaluate student #1 for the suspected disability category of autism because of misinformation. In addition, student #14 turned 10 years old on August 9, 2021 and no longer met the eligibility criteria to be identified as a student with a developmental delay; however, his required reevaluation was actually completed on May 13, 2022. Student #6 was also identified under the eligibility category of developmentally delayed and continued to receive special education and related services past his 10th birthday on January 4, 2022 until the parent revoked consent for all special education and related services on March 15, 2022.

Based on the foregoing, USD #230 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #230 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

    a. Comply with federal regulations implementing the Individuals with Disabilities Education Act (IDEA) Federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a) which require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. This review of existing data may be conducted either with or without holding a meeting.

    b. Comply with federal regulations implementing the IDEA at 34 C.F.R. 300.301(c)(1) which require that initial evaluations be conducted in accordance with the timeline established by each state. State regulations at K.A.R. 91-40-8(f) requires that the initial evaluation process or the reevaluation process must be completed within 60-school-days of receiving written parent consent to conduct assessments unless the school district can justify the need for a longer period of time or has obtained written parent consent for an extension of time

c. Comply with federal l regulations implementing the IDEA at 34 C.F.R. 300.303(b)(2) which require school districts to conduct a reevaluation at least once every three years unless the parent and the school district agree that a reevaluation is not necessary.

d. Federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) which require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE (free appropriate public education) to a child who has or is suspected of having a disability.

e. Federal regulations implementing the IDEA at 34 C.F.R. 300.8 and state regulations at K.A.R. 91-40-1(k) which indicate that a "child with a disability" means a child who is evaluated and found to meet the eligibility criteria as having autism or developmental delays.

2. USD #230 shall review its procedures and practices with regards to conducting the required review of existing data. Based upon that review, USD #230 shall develop written procedures which will include a method to document that all relevant IEP team members, including the parents, participated in the review of existing evaluation data, either with or without a meeting, for the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. No later than August 1, 2022, USD #230 will provide SETS with a copy of this written plan for approval and a plan to disseminate this new procedure to all

special education staff and administrators. Once the written plan has been approved by SET, USD #230 shall implement the dissemination plan and provide documentation that all special education staff and administrators have received a copy no later than 30 days following the approval date.

3. No later than August 1, 2022, USD #230 will arrange for TASN to conduct a training for all licensed and certificated special education staff, including IEP managers, school psychologists, and building administrators working at KSVA in USD #230 regarding the IDEA requirements related to the appropriate procedures for conducting both initial and reevaluations specifically addressing the areas of noncompliance identified during the this investigation. No later than August 30, 2022, USD #230 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as the name and credentials of the person who provided the training. In addition, USD #259 will provide SETS with any handouts and/or a copy of the presentation.

4. No later than August 30, 2022, USD #230 shall reconvene the IEP teams for student #3 and student #5 to determine if the delay in completing the initial special education evaluation resulted in a denial of a free appropriate public education (FAPE); determine what compensatory services, if any, are required; and provide the parent with appropriate PWN. USD #230 shall provide SETS with meeting notes documenting the discussion and the parents' decisions no later than 10 days from the date of the IEP team meeting.

5. Further, USD #230 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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 AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #450
ON JUNE 22, 2022

DATE OF REPORT AUGUST 2, 2022

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

The complaint is against USD #450 (Shawnee Heights Public Schools). In the remainder of the report, "USD #450," the "school," the "district" or the "local education agency (LEA)" shall refer to this responsible public agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on June 22, 2022 and the 30-day timeline to investigate this complaint was extended to facilitate the use of a translator as the parent's native language is Spanish. The timeline was extended for 10-days and ends on August 2, 2022.

Investigation of Complaint

Because the parent's first language is Spanish, Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on July 19, 2022 using an interpreter contracted through the KSDE. Kristen O'Brien, Director of Special Education in USD #450, was interviewed by telephone on June 28, 2022. On July 27, 2022, USD #450 made the following school staff available for an interview:

- Ms. O'Brien
- Kathy Osbourne, Special Education Teacher
- Misty Oshel, Transition Facilitator

In completing this investigation, the Complaint Investigator reviewed documentation provided by the LEA. The following documentation along with interviews were used as the basis of the findings and conclusions of the investigation.

- Individualized Education Program (IEP) dated April 27, 2021
- IEP Goal Progress Report dated May 28, 2021
- Discipline Log entry dated September 24, 2021
- Written statement describing the incident dated September 24, 2021 written by Carrie Carey, Paraprofessional
- Written statements describing the incident dated September 24, 2021 written by Shelia Robles, Paraprofessional
- Written statement describing the incident dated September 25, 2021 written by Bobbi Orton, Paraprofessional
- Email dated September 25, 2021 at 12:02 p.m. written by Kathy Osbourne Special Education Teacher, to Kristen O'Brien, Director of Special Education
- Written statements describing the incident dated September 26, 2021 written by Misty Oshel, Transition Facilitator
- Email dated September 25, 2021 at 12:02 p.m. written by Ms. Osbourne to Ms. O'Brien,
- Email dated October 5, 2021 at 10:27 a.m. written by Ms. Osbourne to Sherri Monhollon, Associate Principal, Cody Whitney, Assistant Principal, and Ms. Oshel
- Email dated October 7, 2021 at 1:39 p.m. written by Ms. Oshel to Ms. Monhollon, Mr. Whitney, Ms. O'Brien, and Ms. Osbourne
- Email dated October 11, 2021 at 2:34 p.m. written by Ms. Osbourne to Ms. O'Brien; Ms. Monhollon, Mr. Whitney, and Ms. Oshel
- Invoice from Topeka Ear, Nose, and Throat dated February 23, 2022 for hearing aids
- Email dated March 23, 2022 at 5:06 p.m. written by Diana Jauregul-Smith, Targeted Case Manager at Serenity, Inc., to Ms. Osbourne and Ms. O'Brien
- Email dated March 24, 2022 at 9:32 a.m. written by Ms. Osbourne to Ms. O'Brien
- Email dated March 24, 2022 at 10:54 a.m. written by Ms. O'Brien to Ms. Osbourne
- Email dated March 24, 2022 at 12:28 p.m. written by Ms. Osbourne to Ms. O'Brien

- Email dated March 24, 2022 at 2:34 p.m. written by Ms. Osbourne to Ms. Jauregul-Smith and Ms. O'Brien
- Email dated March 30, 2022 at 10:02 a.m. written by Ms. Oshel to Corey Hinton, School Social Worker
- Letter dated March 31, 2022 describing the safety plan written to the parent
- IEP Goal Progress Report dated April 21, 2022
- IEP dated April 22, 2022
- Prior Written Notice (PWN) for Identification, Initial Services Placement, Change in Services, Change of Placement, and Request for Consent dated April 22, 2022
- Summary of Performance dated April 22, 2022
- Invoice from Adventure Vision Topeka dated April 22, 2022 for glasses
- Student's attendance record for the 2021-22 school year and Extended School Year (ESY) in June 2022
- Response to the allegations written by Ms. O'Brien dated July 27, 2022

Background Information

This investigation involves a twenty-one-year-old female student who was enrolled at Shawnee Heights High School in USD #450 during the 2021-22 school year. Her most recent evaluation was conducted on March 29, 2020. At that time, the student was found eligible for special education and related services under the exceptionality categories of intellectual disability and hearing impairment. Records show the student met the academic graduation requirements in May 2020 and that she returned to USD #450 for subsequent school years through the age of 21 to address transition, specifically vocational skills. The student lives at home with her parents, both of whom speak Spanish as their home/native language. The parents currently have guardianship of the student; however, at the time of the incident that occurred on September 24, 2021, guardianship had not yet been determined.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint, the parent raised two issues that were investigated.

> ISSUE ONE: The USD #450, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's Individualized Education Plan (IEP), specifically related to supervision, when the student was assaulted by another student on September 24, 2021.

Positions of the Parties

The mother reported that USD #450 failed to implement the student's IEP on September 24, 2021 when she was left unsupervised for 47 minutes. During that timeframe, the mother indicated the student was assaulted by another student assigned to the student's special education classroom. She stated that the other student hit her, kicked her, pulled her hair, and beat her with a water bottle. The other student also used wrestling holds he had seen on television to immobilize the student. As a result of the physical attack, both her glasses and hearing aids were broken.

The mother reported the student was traumatized by the incident and did not return to school full-time until the end of the school year because she was afraid of the other student. The parent reported the other student was disciplined with 10-days of out-of-school-suspension and then re-assigned to a different special education classroom within the same building. The mother believes that if the student had been receiving the specialized instruction described in her IEP, the student would not have been left unsupervised and the incident would never have happened because a staff person would have intervened to either re-direct or stop the other student's aggressive behavior towards the student.

USD #450 reported the student and a peer from her classroom were involved in an incident on September 24, 2021 when the two students left the special education classroom unbeknownst to school staff. During the approximately 40 minutes the two students were not in the classroom, the peer assaulted the student and broke her glasses and hearing aids. USD #450 noted that the student's IEP in effect on the date of the incident did not require the student to receive one-to-one assistance or supervision from either a teacher or a paraprofessional; however, the student's IEP did

require specialized instruction and support for 94% of the student's school day. School staff reported that the incident occurred during a scheduled time that the student should have been receiving special education services. USD #450 acknowledged that the student did not receive approximately 40 minutes of special education services on September 24, 2021 when and while school staff attempted to locate the student after she left the classroom.

They believe the incident was an accident and that appropriate disciplinary procedures were followed. USD #450 noted that the student's IEP requires specialized instruction or support for 94%% of her school day and acknowledged that the IEP services were not being provided during the time the student was not in the classroom and the assault occurred.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #450.

The IEP in effect on September 24, 2021 was developed at an IEP team meeting held on April 27, 2021with the parent in attendance. That IEP describes the student as "generally independent with personal and hygiene needs" and "does best with a schedule". The present level of academic achievement and functional performance also state that the student "performs significantly below same-age peers and grade-level expectations" and that she "requires direct support with some activities of daily living including meal prep, hygiene, money management, medical appointments, etc. as well as social and vocational skills".

The IEP includes one goal as follows: When shown the steps necessary to complete a vocational task, the student will be able to carry out the assignment with minimal assistance at/with 80% accuracy by the end of the IEP year as measured by Performance Assessments. This goal includes two benchmarks with accuracy rates being measured at the end of the semester and at the end of the IEP year.

The IEP does not require a personal paraprofessional or one-to-one support. However, the IEP does include an accommodation for proximity control in all subjects as needed.

The IEP does not require special education support during non-instructional minutes, such has passing between classes, lunch, etc. The IEP does require the following special education and related services:

> The student will receive 7 classes of vocational special education services in the resource / interrelated classroom 3 days per week. The student will participate in a minimum of 2, 60 minute community-based vocational training sessions per week with 30 minutes of transportation provided for each. She will attend IRC [interrelated classroom] classes for vocational education for the other 246 minutes of those 2 days. She will also receive 10 minutes per semester of direct Transition Services in a special education setting, 10 minutes of OT consult per semester, and consult for Speech & Language, Hearing and Audiology 10 minutes every 4 weeks.

The IEP notes that the student will participate in the general education setting less than 40% of the time. LEA staff reported that there are 410 minutes per day at Shawnee Heights High School and the student's IEP requires 385 minutes per day of special education and support which means the student is in the special education setting 94% of her school day.

Documentation of the September 24, 2021 incident reflects that there were four school staff and a substitute teacher working with seven students with IEPs at the time of the incident. The student, two peers, and a school staff typically restock the concession stand at the football field at this time; however, on this date, only one of the students and a paraprofessional went to perform this job because the student and her other peer were completing an art activity. After the paraprofessional and the other student left the area to walk to the football concession stand, the student and the other peer completed their art projects and then left the classroom area to follow them out to the concession stand to complete their regularly scheduled job. However, neither the staff in the classroom area nor the paraprofessional at the concession

stand realized the student and her peer had left the classroom area to complete the concession stand job. The student and the other peer were not able to get to the concession stand on the football field due to a locked gate and the two students were unsure of how to respond. Instead of returning to class or the office to get help, the two students chose to remain at the gate and wait. The attack occurred while the two students were waiting and was witnessed by a parent who was coming to the building to pick up another student at Shawnee Heights High School.

Once the paraprofessional and the other student returned to the classroom, the staff realized that the two students were missing and immediately began to search for them. The parent who was coming into the school building reported seeing an altercation near the football field and the two students were located approximately 40 minutes after they left the classroom area unbeknownst to school staff.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300. 300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the April 27, 2021 IEP was in effect on September 24, 2021 when the incident occurred. While the IEP does not include a one-to-one paraprofessional to support the student, it does require that the student receive specialized instruction 94% of the school day as well as an accommodation for proximity control in all subjects as needed. The student's IEP contained one vocational skills goal and the time the incident occurred was typically scheduled as a vocational activity for the student, two peers, and a school staff. USD #450 acknowledged that the student did not receive her specialized instruction during the approximately 40 minute timeframe that she and the other peer were waiting at the locked gate and unsupervised by school district staff.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the student's Individualized Education Plan (IEP) on September 24, 2021.

> ISSUE TWO: The USD #450, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to reconvene the IEP team to review and revise, if necessary, the student's IEP following the significant change in school attendance following the September 24, 2021 incident.

Positions of the Parties

The parent reported the student was traumatized following the incident on September 24, 2021 and was too scared to return to the school because of her fear of the other student. The student was continuously anxious and refused to be without a family member with her at all times, and her sleeping pattern was disrupted as well.

The parent believes that the other student should not be allowed back at Shawnee Heights High School, especially since the student has attended the district for her whole school career and the other student recently enrolled in USD #450 through an out-of-district waiver. The mother reported that the student was too afraid to come back to the school building on a regular basis following the incident because of the other student and she was unable to see or hear clearly because her glasses and hearing aids were broken in the assault. The mother indicated that USD #450 also failed to reconvene the IEP team until the annual IEP review in April 2022 in order to address the ongoing safety concerns and student's on-going post-traumatic event response which resulted in the significant drop in student's attendance

School staff acknowledged that the student's attendance rate dropped significantly following the incident and reported they made efforts to address the student's fear of the other student by separating them in all settings at school. USD #450 reported the special education teacher was in regular contact with the mother and student following the incident and throughout the 2021-22 school year to offer encouragement for her to return to school.

Ms. O'Brien explained that the school staff made the full-day program described in the April 27, 2021 IEP available to the student throughout the 2021-22 school year even

though the parent chose not to send the student to school regularly as a result of the physical assault that occurred on September 24, 2021. The mother repeatedly told district staff that the student would be returning to school full-time; therefore, USD #450 did not reconvene the IEP team to review and revise the IEP to reflect the student's actual partial day attendance on a couple of school days per week at the Meals on Wheels vocational activity for the majority of the school year because they believed the student would eventually return to school full-time.

Findings of the Investigation

The findings of Issue One are incorporated herein by reference.

Attendance records show the student had a 100% school attendance rate between August 17, 2021 and September 24, 2021. Following the incident, the student did not return to school until October 14, 2021, a total of 12 school day absences. At that time she began attending for approximately two hours on a couple of days per week during the community based vocational activity at Meals-on-Wheels with her mother and she occasionally would return to class at the school. It was noted that the student finally returned to school for full days on May 24, 25, and 26, 2022, the final three days of the school year.

Between October 14, 2021 and May 23, 2022, the student's partial day attendance rate was 44% in October; 29% in November; 25% in December; 0% in January; 26% in February; 50% in March; 32% in April; and 27% in May. It is noted the student only attended a total of 33 full school days and 36 partial school days during the entire 2021-22 school year.

An email dated October 5, 2021 at 10:27 a.m. written by Ms. Osbourne to Cody Whitney, Assistant Principal, and Sherri Monhollon, Associate Principal, and Misty Oshel, Transition Facilitator, stated:

> On Friday of the incident 9/24, the student's mom and brother both stated she would be out of school all of the following week (last week). I expected her to return yesterday. She didn't. I texted her mom and got one word answers and no plan for return. I don't want to misstep at this point! Who is responsible for pinning them down on that? Should I continue to submit

> her absence as "excused?" Again, the student's dad didn't mince words when he stated she will NOT return if the other student is in the building. He is scheduled to return next Tuesday. Please let me know if I can help with at least theoretical plan for educating both students. I don't want to jump too quickly on exiting the student from services until we see whether the other student's family can sustain attendance when it requires transporting to and from.

An email dated October 11, 2021 at 7:50 a.m. written by Ms. Osbourne to Ms. O'Brien, Ms. Monhollon, Mr. Whitney, and Ms. Oshel stated:

> I went over to the student's to talk to her mom this afternoon. I was welcomed warmly, but my optimism was short-lived. I told the mother that the other student would be returning, but to Ann's program [another 18-21 year old classroom at Shawnee Heights High School] ¼ mile away. She started shaking her head immediately. The student is truly traumatized as mentioned before and to a greater extent than I realized. She has moments of serenity, but is adamant about not coming to school. She is up, loudly, at all hours of the night and neither parent is sleeping well as a result. The father hasn't "softened" or lightened up any on his original ultimatum as he lives with his daughter's angst day and night. The mom also expressed doubt that we would be capable of ensuring the student and the other student would never cross paths. I'll ask around, but don't have high hopes for finding an effective therapist. We're going to attempt baby steps by trying to get her back into Meals on Wheels . . . and then take her back home.

An email dated March 24, 2022 at 9:32 a.m. by Ms. Osbourne to Ms. O'Brien summarized her conversation with the mother as follows:

> There's so much going on here. The student's family simply is not satisfied with the other student being allowed to return to this school, especially since he is an out-of-district guy. That aside, the student still has no regular sleeping patterns and decides day by day if she's going to do whatever (Meals on Wheels, school) is proposed. She doesn't let mom out of her sight. At Diana Jauregui-Smith's suggestion, the student started therapy a

few weeks ago. As expected, the therapist said she could try to help through the mom, but she had nothing to offer the student 1:1.

The district acknowledged that the IEP team was not reconvened until April 22, 2022 when they met to review and revise the student's annual IEP. Ms. O'Brien reported that there was no need to reconvene the IEP team because "The special education teacher's knowledge of the student and family served the purpose to identify student needs, parent concerns, options available to address both, and progress monitoring." Documentation and interviews found that Kathy Osbourne, Special Education Teacher, was in touch with the family at least two times each week through phone calls, texts, in-person, or through home visits following the September 24, 2021 incident.

The district reported that the identified student needs were as follows:
1. Feel safe to return to school
2. Interact with her peers and community
3. Continue vocational training

The district reported that the identified parent concerns were as follows:
1. School's ability to keep the student safe
2. Re-establish the student's sleep schedule so she is ready to learn
3. Getting the student back to school

In addition to the on-going conversations with Ms. Osbourne, USD #450 reported three meetings were held with parents following the September 24, 2021 incident and prior to the annual IEP team meeting held on April 22, 2022.

On October 11, 2021, Ms. Osbourne conducted a home visit to inform the parent of the change in the other student's classroom and his consistent supervision, of the installation of a mechanism which notifies staff when someone enters or leaves the classroom, and of purchasing a portable phone which was to be carried and used by staff throughout the building. Ms. Osbourne decided to have the student attend the Meals-on-Wheels transition activity twice a week from approximately 10:15 a.m. until 12:30 p.m. as a way to transition the student back into school on a full-time basis.

On December 9, 2021, Ms. O'Brien met with the student, the parent, and the targeted case manager to discuss all of the steps taken by the district in order to keep the student safe. School staff also realized that the parent had been unable to replace the student's glasses and hearing aids and volunteered to investigate the option of the district replacing these items because the student needed these assistive devices to be "ready to learn." Invoices provided by the district reflect the new hearing aids were ordered on February 23, 2022 and the new glasses were ordered on April 22, 2022.

On March 23, 2022, Diana Jauregul-Smith, the Targeted Case Manager, emailed Ms. O'Brien indicating the mother would like to schedule a meeting with the school and representative from the community based services representatives. This meeting was held on March 30, 2022 with the parent, Ms. Jauregul-Smith, other community-based services representatives, and members of the school IEP team in attendance to discuss the September 24, 2022 incident and keeping the student safe at school. USD #450 reported this was not an IEP team meeting but a community-based service agency meeting.

Following the meeting, USD #450 sent In addition, Ms. Oshel sent an email to Corey Hinton, School Social Worker, stating:

> We are looking at transitioning the student back to school full-time and outside services are asking if the psychologist or social worker could meet with her to talk about her anxiety.

In addition, USD #450 sent a letter dated March 31, 2022 to the family describing the previous steps taken to keep the student safe while at school.

The April 27, 2021 IEP states, "Parents will receive written reports of the student's progress toward meeting annual IEP goals in accordance with the district's established grade reporting schedule". Ms. O'Brien indicated USD #450's practice is that students in Kindergarten through twelfth grade receive IEP goal progress reports on a quarterly basis which is the same timeframe as their typical peers receive quarterly grade reports. However, USD #450's practice is to only provides IEP goal progress reports at the end of each semester and the end of the IEP year for students in the 18-21 year old transition program because there is no "established grade reporting schedule" for nondisabled peers ages 18 – 21.

The IEP goal progress report from the end of the second semester of the 2020-21 school year was dated May 28, 2021 and indicated that the student was making adequate progress to meet the annual goal by the end of the IEP year in April 2022. No IEP goal progress report was provided for the end of the first semester of the 2021-22 school year. The next IEP goal progress report was dated April 21, 2022 and stated that the student met the annual goal but noted "some attendance issues / excellent skills".

The annual IEP team meeting was held on April 22, 2022 with the parent in attendance. The present level of performance in that IEP does not mention the incident that occurred on September 24, 2021 nor the student's on-going post-traumatic event response which resulted in the significant drop in student's attendance. The IEP goal was revised from completing a vocational task with 80% accuracy to 90% accuracy and the services and placement remained the same as the April 27, 2021 IEP despite the fact the student had not received that level of special education services for over seven months of the 2021-22 school year.

At the end of the April 22, 2022 IEP team meeting, the parent was provided a Prior Written Notice (PWN) for Identification, Initial Services Placement, Change in Services, Change of Placement, and Request for Consent and a Summary of Performance (SOP). Just like the IEP, the SOP does not mention the September 24, 2021 incident and the subsequent post-traumatic event response which resulted in the significant drop in student's attendance. It is noted that the parent did not sign the PWN for termination of services due to reaching the age of 21.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.324(b)(1) require school districts to review a student's IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected progress toward those annual goals, the results of any reevaluation, any information about the child provided to, or by the parents, the child's anticipated needs, or other matters.

Federal regulations at 34 C.F.R. 300.321 describe the parent as a required member of the IEP team. Federal regulations at 34 C.F.R. 300.322 describes the steps that school

districts must take in order to allow parents the opportunity to participate in the IEP process. Both of these regulations reflect the IDEA's emphasis on the parent being involved in the IEP decision-making process.

In this case, the student was assaulted on school grounds on September 24, 2021 and as a result suffered extreme anxiety and sleep disruptions which resulted in the significant drop in student's attendance. After the incident, the family of the student indicated that the student would not return to school if the other student was allowed back on campus. USD #450 disciplined the other student but allowed him back on campus but in another classroom for students ages 18-21 in order to separate the two students.

The student was absent a total of 12 school days until the special education teacher was able to convince the mother to allow the student to attend school for approximately two hours on a couple of days per week during the community based vocational activity at Meals-on-Wheels with her mother and occasionally join the class following that activity. School district staff believed that this reduction in special education services would result in the student feeling safe at school and eventually returning to the full-time level of special education services provided prior to the incident. Attendance records show the student's partial day attendance ranged from a low of 0% in January to a high of 50% in March and that the student did not return to school full-time until the last three days of the 2021-22 school year.

Although several different district staff had multiple, on-going contacts with the family, the IEP team never met as a whole to discuss the parent's safety concerns and to develop a coordinated plan to address the student's anxiety and vision / hearing deficits resulting from the broken glasses and hearing aids until the annual IEP review on April 22, 2022 which is seven months following the incident. The email dated March 30, 2022 from Ms. Oshel to the school social worker shows the school did have knowledge of the need for counseling as an additional related service.

Even with the best of intentions, school staff presumed to know both the student's needs and parent's concerns without the parent being given the opportunity to share this information with the IEP team and develop a plan for meeting the new needs of the student. It appears that USD #450 unilaterally identified the student needs and the parent needs based on the special education teacher's relationship with the family.

However, these needs were never discussed nor addressed by the entire IEP team with the parent given the opportunity to participate in the process.

The school district believes there was no need to convene the entire IEP team when the parent and the LEA representative (the special education teacher) were in agreement with the changes made to the IEP including a significant drop in the level of special education services; however, the April 27, 2021 IEP was never amended with an agreement between the LEA representative and the parent nor was the parent provided with PWN for the material change of services and significant change of placement when the student began to consistently only attend school on a part-time basis from October 14, 2021 until May 24, 2022.

The special education teacher reported she shared the safety plan verbally with the parent on multiple occasions; however, USD #450 did not share this safety plan in writing with the parent until after the March 30, 2022 meeting with the parent and community-based services representatives.

It wasn't until the December 9, 2021 meeting between the parent, the targeted case manager, and Ms. O'Brien, that the district discovered the parent had been unable to repair the student's broken glasses and hearing aids. It is noted that USD #450 did pay to replace the student's hearing aids and glasses which were broken during the assault on September 24, 2021. However, the student was without her hearing aids for approximately five months and was without her glasses for approximately seven months during the 2021-22 school year.

USD #450 did not reconvene the student's IEP team to discuss the material change in services and substantial change of placement resulting from the student's post-traumatic response to the assault on September 24, 2021even though there was sufficient attendance record data to suggest the need for the IEP team to meet to discuss the student's anticipated needs such as counseling or a safety plan based her traumatic response to the incident on September 24, 2021. In addition, the IEP team never reconvened to discuss plans for accommodating for the student's vision and hearing deficits resulting from the broken glasses and hearing aids which were not replaced until between five and seven months following the physical assault.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to review and revise the IEP, as appropriate, due to the need to meet and discuss the student's anticipated needs during the 2021-22 school year.

Federal regulations at 34 C.F.R. 300.320(a)(3) requires that districts include a statement in the IEP describing how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided.

The student's IEP dated April 27, 2021 includes a statement that parents will receive written reports of the student progress toward meeting annual IEP goals in accordance with the district's established grade reporting schedule; however, the specific timeframe for when USD #450 shall provide these IEP goal progress reports is not stated in the IEP.

Ms. O'Brien and Ms. Osbourne explained that USD #450 has a practice to provide IEP goal progress reports to students in their 18-21 year old program at the end of each semester and the end of the IEP cycle. The student's IEP goal contains two benchmarks which are to be achieved by the end of each semester and at the end of the IEP cycle.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to include a description of when the IEP goal progress reports will be provided to parents.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related

services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case, the USD #450 acknowledged that it failed to provide the specialized instruction to the student during the approximately 40 minute's timeframe when she and the other peer were waiting at the locked gate and unsupervised by school district staff.

B. Federal regulations implementing the IDEA 34 C.F.R. 300.324(b)(1) which require school districts to review a student's IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected progress toward those annual goals, the results of any reevaluation, any information about the child provided to, or by the parents, the child's anticipated needs, or other matters.

   In this case, USD #450 did not reconvene the student's IEP team to discuss the significant change in services and placement resulting from the student's post-traumatic response to the assault on September 24, 2021even though there was sufficient attendance record data to suggest the need for the IEP team to meet to discuss the student's anticipated needs such as counseling or a safety plan based on her traumatic response to the incident on September 24, 2021. In addition, the IEP team never reconvened to discuss plans for accommodating for the student's vision and hearing deficits resulting from the broken glasses and hearing aids even though these devices were not replaced until between five and seven months after they were broken in the physical assault on September 24, 2021.

C. Federal regulations implementing the IDEA at regulations at 34 C.F.R. 300.320(a)(3) requires that districts include a statement in the IEP describing how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting annual goals will be provided to the parent.

In this case, USD #450 did not include a description of when the IEP goal progress reports would be provided to the parent. Instead, USD #450 has a practice to provide IEP goal progress reports to students in their 18-21 year old program at the end of each semester and the end of the IEP cycle as its "established grade reporting schedule" which is less frequent than other students in the districts kindergarten through twelfth grade programs.

Based on the foregoing, USD #450 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #450 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

    a. Comply with federal regulations at 34 C.F.R. 300.323(c)(2) which require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP as well as state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) which require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

    b. Comply with Federal regulations implementing the IDEA 34 C.F.R. 300.324(b)(1) which require school districts to review a student's IEP periodically, but at least annually to determine whether the annual goals for the student are being achieved and revise the IEP, if appropriate, in order to address any lack of expected progress toward those annual goals, the results of any reevaluation, any information about the child provided to, or by the parents, the child's anticipated needs, or other matters.

    c. Comply with Federal regulations implementing the IDEA at regulations at 34 C.F.R. 300.320(a)(3) which requires district to include a statement in the IEP describing how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the

child is making toward meeting the annual goals will be provided to the parent.

2. USD #450 shall review its procedures and practices with regards to the "established grade reporting schedule" for providing IEP goal progress reports for students in the18-21 year old program. Based upon that review, USD #450 shall develop a written grade reporting schedule for the students in the 18-21 year old program and revise the district's model IEP form to include a description of when the IEP goal progress reports will be provided. No later than September 1, 2022, USD #443 will provide SETS with a copy of the revised IEP form, a copy of this written procedure and documentation that shows that all special education staff and administrators in the district's 18-21 year old programs have received a copy of the established procedure.

3. USD #450 shall reconvene the student's IEP team no later than September 1, 2022 to offer a minimum of eight months of compensatory services consistent with the services described in the April 22, 2022 IEP to the parent in order to provide a free appropriate public education (FAPE) to the student in light of the failure to provide the specialized instruction described in the April 27, 2021 IEP on September 24, 2021 and the failure to reconvene the IEP team in a timely manner to review and revise, if appropriate, the IEP goals and special education services to address the changing needs of the student resulting from the student's post-traumatic response to the physical assault on September 24, 2021. USD #450 will make every effort to include representatives from the student's community based services in this IEP team meeting with parent consent in order to provide the parent with clear ramifications of continuing school based services on the student's adult services. USD #450 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parent's decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.

4. Further, USD #450 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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)

DEPARTAMENTO DE EDUCACIÓN DEL ESTADO DE KANSAS EDUCACIÓN ESPECIAL Y SERVICIOS DE TÍTULO

INFORME DE QUEJA PRESENTADA

CONTRA EL

DISTRITO ESCOLAR UNIFICADO #450

EL 22 DE JUNIO DE 2022

FECHA DEL INFORME 2 DE AGOSTO DE 2022

Este informe es en respuesta a una queja presentada ante nuestra oficina en nombre de _____por su madre,_____. En el resto del informe, se hará referencia a _____ como "la estudiante" y a _____ como "la madre" o "la madre".

La queja es contra el USD #450 (Escuelas Públicas de Shawnee Heights). En el resto del informe, "USD #450", la "escuela", el "distrito" o la "agencia de educación local (LEA)" se referirán a estas agencias públicas responsables.

El Departamento de Educación del Estado de Kansas (KSDE) permite un plazo de 30 días para investigar una queja de un niño y se considera que una queja se presentó en la fecha en que se entrega tanto al KSDE como al distrito escolar. En este caso, KSDE recibió la denuncia el 22 de junio de 2022 y se extendió el plazo de 30 días para investigar esta denuncia para facilitar el uso de un traductor ya que el idioma nativo de los padres es el español. El plazo se extendió por 10 días y finaliza el 2 de agosto de 2022.

Investigación de la queja

Debido a que el primer idioma del padre es el español, Nancy Thomas, investigadora de quejas, entrevistó al padre por teléfono el 19 de julio de 2022 con un intérprete contratado a través de KSDE . Kristen O'Brien, Directora de Educación Especial en USD #450, fue entrevistada por teléfono el 28 de junio de 2022. El 27 de julio de 2022, USD #450 puso a disposición del siguiente personal escolar para una entrevista:

- Sra. O'Brien
- Kathy Osbourne, Maestra de Educación Especial
- Misty Oshel, facilitadora de transición

Al completar esta investigación, el investigador de quejas revisó la documentación proporcionada por la LEA. La siguiente documentación junto con entrevistas se utilizaron como base de los hallazgos y conclusiones de la investigación.

- Programa de Educación Individualizada (IEP) del 27 de abril de 2021
    - Informe de progreso de la meta del IEP con fecha del 28 de mayo de 2021
    - Registro de disciplina con fecha del 24 de septiembre de 2021
    - Declaración escrita que describe el incidente fechada el 24 de septiembre de 2021 escrita por Carrie Carey, Paraprofessional
    - Declaraciones escritas que describen el incidente con fecha del 24 de septiembre de 2021 escritas por Shelia Robles, Paraprofessional
    - Declaración escrita que describe el incidente fechada el 25 de septiembre de 2021 escrita por Bobbi Orton, Paraprofessional
    - Correo electrónico con fecha del 25 de septiembre de 2021 a las 12:02 p. m. escrito por Kathy Osbourne, maestra de educación especial, a Kristen O'Brien, directora de educación especial
    - Declaraciones escritas que describen el incidente con fecha del 26 de septiembre de 2021 escritas por Misty Oshel, facilitadora de transición
    - Correo electrónico del 25 de septiembre de 2021 a las 12:02 pm escrito por la Sra. Osbourne a la Sra. O'Brien,
    - Correo electrónico con fecha del 5 de octubre de 2021 a las 10:27 am escrito por la Sra. Osbourne a Sherri Monhollon, directora adjunta, Cody Whitney, subdirector y la Sra. Oshel
    - Correo electrónico con fecha del 7 de octubre de 2021 a la 1:39 p. m. escrito por la Sra. Oshel a la Sra. Monhollon, el Sr. Whitney, la Sra. O'Brien y la Sra. Osbourne
    - Correo electrónico con fecha del 11 de octubre de 2021 a las 2:34 p. m. escrito por la Sra. Osbourne a la Sra. O'Brien; Sra. Monhollon, Sr. Whitney y Sra. Oshel
    - Factura de Topeka Ear, Nose, and Throat con fecha del 23 de febrero de 2022 para audífonos
    - Correo electrónico con fecha del 23 de marzo de 2022 a las 5:06 p. m. escrito por Diana Jauregul-Smith, administradora de casos específicos en Serenity, Inc., a la Sra. Osbourne y la Sra. O'Brien

· Correo electrónico con fecha del 24 de marzo de 2022 a las 9:32 am escrito por la Sra. Osbourne a la Sra. O'Brien

· Correo electrónico con fecha del 24 de marzo de 2022 a las 10:54 am escrito por la Sra. O'Brien a la Sra. Osbourne

· Correo electrónico del 24 de marzo de 2022 a las 12:28 pm escrito por la Sra. Osbourne a la Sra. O'Brien

· Correo electrónico del 24 de marzo de 2022 a las 2:34 p. m. escrito por la Sra. Osbourne a la Sra. Jauregul-Smith y la Sra. O'Brien

· Correo electrónico con fecha del 30 de marzo de 2022 a las 10:02 am escrito por la Sra. Oshel a Corey Hinton, trabajador social escolar

· Carta con fecha del 31 de marzo de 2022 que describe el plan de seguridad escrito para los padres

· Informe de progreso de la meta del IEP con fecha del 21 de abril de 2022

· IEP del 22 de abril de 2022

· Aviso previo por escrito (PWN) para identificación, colocación de servicios iniciales, cambio de servicios, cambio de colocación y solicitud de consentimiento con fecha del 22 de abril de 2022

· Resumen de desempeño con fecha 22 de abril de 2022

· Factura de Adventure Vision Topeka con fecha 22 de abril de 2022 para anteojos

· Registro de asistencia del estudiante para el año escolar 2021-22 y Año Escolar Extendido (ESY) en junio de 2022

· Respuesta a las acusaciones escrita por la Sra. O'Brien con fecha del 27 de julio de 2022

Información de antecedentes

Esta investigación involucra a una estudiante de veintiún años que estaba inscrita en Shawnee Heights High School en USD #450 durante el año escolar 2021-22 . Su evaluación más reciente se realizó el 29 de marzo de 2020. En ese momento, se determinó que la estudiante era elegible para recibir educación especial y servicios relacionados en las categorías excepcionales de discapacidad intelectual y discapacidad auditiva. Los registros muestran que la estudiante cumplió con los requisitos académicos de graduación en mayo de 2020 y que regresó al USD #450 para los años escolares posteriores hasta los 21 años para abordar la transición, específicamente las habilidades vocacionales. La estudiante vive en casa con sus

padres, quienes hablan español como lengua materna/hogar. Los padres actualmente tienen la tutela del estudiante; sin embargo, al momento del incidente ocurrido el 24 de septiembre de 2021, aún no se había determinado la tutela.

Problemas

La Ley de Educación para Individuos con Discapacidades (IDEA) y la Ley de Educación Especial para Niños Excepcionales de Kansas otorgan a KSDE jurisdicción para investigar alegaciones de incumplimiento de las leyes de educación especial que ocurrieron no más de un año después de la fecha en que KSDE recibió la queja (34 CFR 300.153 (c); KAR 91-40-51(b)(1)).

Con base en la queja por escrito, el padre planteó dos cuestiones que se investigaron.

> **NÚMERO UNO:** El USD #450, en violación de las regulaciones estatales y federales que implementan la Ley de Educación para Individuos con Discapacidades (IDEA), no implementó el Plan de Educación Individualizado (IEP) del estudiante, específicamente relacionado con la supervisión, cuando el estudiante fue agredido por otro estudiante en septiembre. 24 de septiembre de 2021.

Posiciones de las partes

La madre informó que USD #450 no implementó el IEP de la estudiante el 24 de septiembre de 2021 cuando se la dejó sin supervisión durante 47 minutos. Durante ese período de tiempo, la madre indicó que el estudiante fue agredido por otro estudiante asignado al salón de clases de educación especial del estudiante. Indicó que el otro estudiante la golpeó, le dio patadas, le jaló el cabello y la golpeó con una botella de agua. El otro estudiante también usó llaves de lucha libre que había visto en la televisión para inmovilizar al estudiante. Como resultado del ataque físico, tanto sus anteojos como sus audífonos se rompieron.

La madre informó que el estudiante estaba traumatizado por el incidente y no regresó a la escuela a tiempo completo hasta el final del año escolar porque tenía miedo del otro estudiante. El padre informó que el otro estudiante fue disciplinado con 10 días de suspensión fuera de la escuela y luego reasignado a un salón de educación especial diferente dentro del mismo edificio. La madre cree que si el estudiante hubiera estado recibiendo la instrucción especializada descrita en su IEP, el estudiante no se habría quedado sin supervisión y el incidente nunca habría ocurrido porque un miembro del personal habría intervenido para redirigir o detener la atención del otro estudiante. Comportamiento agresivo hacia el alumno.

USD #450 informó que la estudiante y un compañero de su salón de clases estuvieron involucrados en un incidente el 24 de septiembre de 2021 cuando los dos estudiantes abandonaron el salón de educación especial sin que el personal de la escuela lo supiera. Durante los aproximadamente 40 minutos que los dos estudiantes no estuvieron en el salón de clases, el compañero agredió a la estudiante y le rompió los anteojos y los audífonos. El USD #450 señaló que el IEP del estudiante vigente en la fecha del incidente no requería que el estudiante recibiera asistencia individual o supervisión de un maestro o un paraprofesional; sin embargo, el IEP del estudiante requería instrucción especializada y apoyo durante el 94 % de la jornada escolar del estudiante. El personal de la escuela informó que el incidente ocurrió durante un tiempo programado en el que el estudiante debería haber estado recibiendo servicios de educación especial. USD #450 reconoció que la estudiante no recibió

aproximadamente 40 minutos de servicios de educación especial el 24 de septiembre de 2021 cuando y mientras el personal de la escuela intentaba localizar a la estudiante después de que salió del salón de clases.

Creen que el incidente fue un accidente y que se siguieron los procedimientos disciplinarios apropiados. USD #450 señaló que el IEP de la estudiante requiere instrucción especializada o apoyo durante el 94%% de su jornada escolar y reconoció que los servicios del IEP no se proporcionaron durante el tiempo que la estudiante no estuvo en el salón de clases y ocurrió la agresión.

Hallazgos de la investigación

Los siguientes hallazgos se basan en una revisión de la documentación y entrevistas con los padres y el personal de LEA en USD #450.

El IEP vigente el 24 de septiembre de 2021 se desarrolló en una reunión del equipo del IEP celebrada el 27 de abril de 2021 con la asistencia de los padres. Ese IEP describe al estudiante como “generalmente independiente con necesidades personales y de higiene” y “se desempeña mejor con un horario”. El nivel actual de rendimiento académico y rendimiento funcional también establece que la estudiante “se desempeña significativamente por debajo de sus compañeros de la misma edad y las expectativas del nivel de grado” y que ella “requiere apoyo directo con algunas actividades de la vida diaria, incluida la preparación de comidas, la higiene, la administración del dinero, citas médicas, etc. así como habilidades sociales y vocacionales”.

El IEP incluye una meta de la siguiente manera: Cuando se le muestren los pasos necesarios para completar una tarea vocacional, el estudiante podrá realizar la tarea con asistencia mínima con un 80 % de precisión al final del año del IEP, según lo medido por las Evaluaciones de desempeño. . Esta meta incluye dos puntos de referencia con tasas de precisión que se miden al final del semestre y al final del año del IEP.

El IEP no requiere un paraprofesional personal o apoyo individual. Sin embargo, el IEP incluye una adaptación para el control de proximidad en todas las materias según sea necesario.

El IEP no requiere apoyo de educación especial durante los minutos que no sean de instrucción, como el paso entre clases, el almuerzo, etc. El IEP sí requiere la siguiente educación especial y servicios relacionados:

> El estudiante recibirá 7 clases de servicios de educación especial vocacional en el recurso / Aula interrelacionada 3 días a la semana. El estudiante participará en un mínimo de 2 sesiones de capacitación vocacional comunitaria de 60 minutos por semana con 30 minutos de transporte para cada una. Asistirá a clases de IRC [aula interrelacionada] para educación vocacional durante los otros 246 minutos de esos 2 días. También recibirá 10 minutos por semestre de servicios de transición directos en un entorno de educación especial, 10 minutos de consulta de

OT por semestre y consulta de habla y lenguaje, audición y audiología 10 minutos cada 4 semanas.

El IEP señala que el estudiante participará en el entorno de educación general menos del 40 % del tiempo. El personal de LEA informó que hay 410 minutos por día en Shawnee Heights High School y el IEP del estudiante requiere 385 minutos por día de educación especial y apoyo, lo que significa que el estudiante está en el entorno de educación especial el 94 % de su día escolar.

La documentación del incidente del 24 de septiembre de 2021 refleja que había cuatro miembros del personal de la escuela y un maestro sustituto trabajando con siete estudiantes con IEP en el momento del incidente. El estudiante, dos compañeros y el personal de la escuela suelen reabastecer el puesto de comida en el campo de fútbol en este momento; sin embargo, en esta fecha, solo uno de los estudiantes y un paraprofesional fueron a realizar este trabajo porque la estudiante y su otro compañero estaban realizando una actividad de arte. Después de que el paraprofesional y el otro estudiante abandonaron el área para caminar hacia el puesto de comida de fútbol, el estudiante y el otro compañero completaron sus proyectos de arte y luego abandonaron el área del salón de clases para seguirlos hasta el puesto de comida para completar su trabajo programado regularmente. Sin embargo, ni el personal en el área del salón de clases ni el paraprofesional en el puesto de comida se dieron cuenta de que la estudiante y su compañero habían dejado el área del salón de clases para completar el trabajo del puesto de comida. El estudiante y el otro compañero no pudieron llegar al puesto de comida en el campo de fútbol debido a una puerta cerrada y los dos estudiantes no estaban seguros de cómo responder. En lugar de regresar a clase oa la oficina para obtener ayuda, los dos estudiantes optaron por permanecer en la puerta y esperar. El ataque ocurrió mientras los dos estudiantes esperaban y fue presenciado por un padre que venía al edificio para recoger a otro estudiante en la escuela secundaria Shawnee Heights.

Una vez que el paraprofesional y el otro estudiante regresaron al salón de clases, el personal se dio cuenta de que los dos estudiantes no estaban e inmediatamente comenzaron a buscarlos. El padre que ingresaba al edificio de la escuela informó haber visto un altercado cerca del campo de fútbol y los dos estudiantes fueron ubicados aproximadamente 40 minutos después de que abandonaron el área del salón de clases sin que el personal de la escuela lo supiera.

Regulaciones aplicables y conclusiones

Las regulaciones federales en 34 CFR 300. 300.323(c)(2) requieren que los distritos escolares se aseguren de que tan pronto como sea posible después del desarrollo del IEP, la educación especial y los servicios relacionados estén disponibles para el niño de acuerdo con el IEP del niño. Además, las reglamentaciones estatales que implementan la Ley de Educación Especial para Niños Excepcionales de Kansas en KAR 91-40-19(a) requieren que cada distrito escolar, maestro y proveedor de servicios

relacionados brinde educación especial y servicios relacionados al niño de acuerdo con las necesidades del niño. PEI.

En este caso, el IEP del 27 de abril de 2021 estaba en vigor el 24 de septiembre de 2021 cuando ocurrió el incidente. Si bien el IEP no incluye un paraprofesional uno a uno para apoyar al estudiante, sí requiere que el estudiante reciba instrucción especializada el 94 % del día escolar, así como una adaptación para el control de proximidad en todas las materias, según sea necesario. El IEP del estudiante contenía una meta de habilidades vocacionales y el momento en que ocurrió el incidente generalmente se programó como una actividad vocacional para el estudiante, dos compañeros y el personal de la escuela. USD #450 reconoció que la estudiante no recibió su instrucción especializada durante el período de tiempo de aproximadamente 40 minutos que ella y el otro compañero esperaban en la puerta cerrada y sin la supervisión del personal del distrito escolar.

Con base en lo anterior, se fundamenta una violación de los estatutos y reglamentos de educación especial por no implementar el Plan de Educación Individualizado (IEP) del estudiante el 24 de septiembre de 2021.

> **PROBLEMA DOS:** El USD #450, en violación de las regulaciones estatales y federales que implementan la Ley de Educación para Individuos con Discapacidades (IDEA), no volvió a convocar al equipo del IEP para revisar y revisar, si fuera necesario, el IEP del estudiante luego del cambio significativo en la asistencia escolar después de la reunión de septiembre. 24, 2021 incidente.

Posiciones de las partes

El padre informó que el estudiante estaba traumatizado luego del incidente del 24 de septiembre de 2021 y estaba demasiado asustado para regresar a la escuela debido a su miedo al otro estudiante. La estudiante estaba continuamente ansiosa y se negaba a estar sin un miembro de la familia con ella en todo momento, y su patrón de sueño también se vio interrumpido.

El padre cree que no se debe permitir que el otro estudiante regrese a Shawnee Heights High School, especialmente porque el estudiante ha asistido al distrito durante toda su carrera escolar y el otro estudiante se inscribió recientemente en USD #450 a través de una exención fuera del distrito. La madre informó que la estudiante tenía demasiado miedo de regresar al edificio de la escuela con regularidad después del incidente debido al otro estudiante y que no podía ver ni escuchar con claridad porque sus anteojos y audífonos se rompieron en el asalto. La madre indicó que el USD #450 tampoco volvió a convocar al equipo del IEP hasta la revisión anual del IEP en abril de 2022 para abordar las preocupaciones de seguridad en curso y la respuesta al evento postraumático en curso del estudiante que resultó en una caída significativa en la asistencia escolarel personal reconoció que la tasa de asistencia del estudiante se redujo significativamente después del incidente e informó que se esforzaron por abordar el miedo del estudiante al otro estudiante al separarlos en todos los entornos de la escuela. USD #450 informó que el maestro de educación especial estuvo en contacto regular con la madre y el estudiante después del incidente y durante todo el año escolar 2021-22 para alentarla a que regresara a la escuela.

La Sra. O'Brien explicó que el personal de la escuela puso a disposición del estudiante el programa de día completo descrito en el IEP del 27 de abril de 2021 durante todo el año

escolar 2021-22, aunque los padres optaron por no enviar al estudiante a la escuela regularmente como resultado de la agresión física que ocurrió el 24 de septiembre de 2021. La madre le dijo repetidamente al personal del distrito que el estudiante regresaría a la escuela a tiempo completo; por lo tanto, USD #450 no volvió a convocar al equipo del IEP para revisar y revisar el IEP para reflejar la asistencia parcial real del estudiante en un par de días escolares por semana en la actividad vocacional Meals on Wheels durante la mayor parte del año escolar porque creían el estudiante eventualmente regresaría a la escuela a tiempo completo.

Hallazgos de la Investigación

Los hallazgos del Número Uno se incorporan aquí como referencia.

Los registros de asistencia muestran que el estudiante tuvo una tasa de asistencia escolar del 100 % entre el 17 de agosto de 2021 y el 24 de septiembre de 2021. Después del incidente, el estudiante no regresó a la escuela hasta el 14 de octubre de 2021, un total de 12 días de ausencia escolar. En ese momento, ella comenzó a asistir durante aproximadamente dos horas un par de días a la semana durante la actividad vocacional comunitaria en Meals-on-Wheels con su madre y ocasionalmente regresaba a clases en la escuela. Se señaló que el estudiante finalmente regresó a la escuela por días completos el 24, 25 y 26 de mayo de 2022, los últimos tres días del año escolar.

Entre el 14 de octubre de 2021 y el 23 de mayo de 2022, la tasa de asistencia de día parcial del estudiante fue del 44 % en octubre; 29% en noviembre; 25% en diciembre; 0% en enero; 26% en febrero; 50% en marzo; 32% en abril; y 27% en mayo. Se observa que el estudiante solo asistió a un total de 33 días escolares completos y 36 días escolares parciales durante todo el año escolar 2021-22.

Un correo electrónico fechado el 5 de octubre de 2021 a las 10:27 a. m. escrito por la Sra. Osbourne a Cody Whitney, subdirector, y Sherri Monhollon, subdirectora, y Misty Oshel, facilitadora de transición, declaró:

> El viernes del incidente 9/24, el la mamá y el hermano de la estudiante dijeron que ella estaría fuera de la escuela toda la semana siguiente (la semana pasada). Esperaba que regresara ayer. ella no lo hizo Le envié un mensaje de texto a su madre y obtuve respuestas de una palabra y sin plan de regreso. ¡No quiero equivocarme en este punto! ¿Quién es responsable de inmovilizarlos en eso? ¿Debería continuar presentando su ausencia como "justificada"? Una vez más, el padre de la estudiante no se anduvo con rodeos cuando dijo que ella NO regresará si el otro estudiante está en el edificio. Está previsto que regrese el próximo martes. Avíseme si puedo ayudar con al menos un plan teórico para educar a ambos estudiantes. No quiero precipitarme demasiado en sacar al estudiante de los servicios hasta que veamos si la familia del otro estudiante puede mantener la asistencia cuando se requiera transporte hacia y desde.

Un correo electrónico fechado el 11 de octubre de 2021 a las 7:50 am escrito por la Sra. Osbourne a la Sra. O'Brien, la Sra. Monhollon, el Sr. Whitney y la Sra. Oshel decía:

> Fui a casa de la estudiante para hablar con su madre este tarde. Me recibieron calurosamente, pero mi optimismo duró poco. Le dije a la madre que el otro estudiante regresaría, pero al programa de Ann [otro salón de clases de 18 a 21 años en Shawnee Heights High School] a ¼ de milla de distancia. Ella comenzó a sacudir la cabeza inmediatamente. El estudiante está realmente traumatizado como se mencionó antes y en mayor medida de lo que me di cuenta. Tiene momentos de serenidad, pero insiste en no ir a la escuela. Ella está despierta, ruidosamente, a todas horas de la noche y, como resultado, ninguno de los padres duerme bien. El padre no ha "suavizado" ni aligerado nada de su ultimátum original mientras vive día y noche con la angustia de su hija. La madre también expresó dudas de que fuéramos capaces de garantizar que el estudiante y el otro estudiante nunca se cruzarían. Preguntaré por ahí, pero no tengo muchas esperanzas de encontrar un terapeuta eficaz. Vamos a intentar pequeños pasos tratando de que vuelva a Meals on Wheels. . . y luego llevarla de vuelta a casa.

Un correo electrónico con fecha del 24 de marzo de 2022 a las 9:32 am de la Sra. Osbourne a la Sra. O'Brien resumió su conversación con la madre de la siguiente manera:

> Están sucediendo muchas cosas aquí. La familia del estudiante simplemente no está satisfecha con que se le permita al otro estudiante regresar a esta escuela, especialmente porque él es un chico fuera del distrito. Aparte de eso, la estudiante todavía no tiene patrones regulares de sueño y decide día a día si va a hacer lo que se proponga (Meals on Wheels, la escuela). Ella no deja a mamá fuera de su vista. Por sugerencia de Diana Jauregui-Smith, la alumna inició terapia hace unas semanas. Como era de esperar, la terapeuta dijo que podía intentar ayudar a través de la madre, pero que no tenía nada que ofrecerle al estudiante 1:1.

El distrito reconoció que el equipo del IEP no se volvió a reunir hasta el 22 de abril de 2022 cuando se reunieron para revisar y revisar el IEP anual del estudiante. La Sra. O'Brien informó que no había necesidad de volver a convocar al equipo del IEP porque "el conocimiento del estudiante y la familia por parte del maestro de educación especial sirvió para identificar las necesidades del estudiante, las preocupaciones de los padres, las opciones disponibles para abordar ambas y el seguimiento del progreso". La documentación y las entrevistas encontraron que Kathy Osbourne, maestra de educación especial, estaba en contacto con la familia al menos dos veces por semana a través de llamadas telefónicas, mensajes de texto, en persona o mediante visitas domiciliarias después del incidente del 24 de septiembre de 2021.

El distrito informó que las necesidades estudiantiles identificadas fueron las siguientes:

1. Sentirse seguro para regresar a la escuela
2. Interactuar con sus compañeros y la comunidad
3. Continuar la capacitación vocacional

El distrito informó que las preocupaciones de los padres identificadas fueron las siguientes:
1. La capacidad de la escuela para mantener a la estudiante segura
2. Restablecer el horario de sueño de la estudiante para que esté lista para aprender
3. Lograr que la estudiante regrese a la escuela

Además de la conversaciones en marcha con la Sra. Osbourne, USD #450 informó que se realizaron tres reuniones con los padres después del incidente del 24 de septiembre de 2021 y antes de la reunión anual del equipo del IEP celebrada el 22 de abril de 2022.

El 11 de octubre de 2021, la Sra. Osbourne realizó una visita domiciliaria para informar a los padres del cambio en el salón de clases del otro estudiante y su supervisión constante, de la instalación de un mecanismo que notifica al personal cuando alguien entra o sale del salón de clases, y de la compra de un teléfono portátil que debía ser llevado y utilizado por Personal en todo el edificio. La Sra. Osbourne decidió que el estudiante asistiera a la actividad de transición Meals-on-Wheels dos veces por semana desde aproximadamente las 10:15 a. m. hasta las 12:30 p. m. como una forma de que el estudiante regrese a la escuela a tiempo completo.

El 9 de diciembre de 2021, la Sra. O'Brien se reunió con el estudiante, el padre y el administrador del caso específico para hablar sobre todos los pasos tomados por el distrito para mantener a salvo al estudiante. El personal de la escuela también se dio cuenta de que el padre no había podido reemplazar los anteojos y los audífonos del estudiante y se ofreció como voluntario para investigar la opción de que el distrito reemplazara estos artículos porque el estudiante necesitaba estos dispositivos de asistencia para estar "listo para aprender". Las facturas proporcionadas por el distrito reflejan que los nuevos audífonos se ordenaron el 23 de febrero de 2022 y los nuevos anteojos se ordenaron el 22 de abril de 2022.

El 23 de marzo de 2022, Diana Jauregul-Smith, administradora de casos específicos, envió un correo electrónico a la Sra. O' Brien indicando que a la madre le gustaría programar una reunión con la escuela y un representante de los representantes de servicios comunitarios. Esta reunión se llevó a cabo el 30 de marzo de 2022 con la presencia de la madre, la Sra. Jauregul-Smith, otros representantes de servicios comunitarios y miembros del equipo del IEP de la escuela para discutir el incidente del 24 de septiembre de 2022 y mantener al estudiante seguro en la escuela. . USD #450 informó que no se trataba de una reunión del equipo del IEP, sino de una agencia de servicios comunitarios.

Después de la reunión, USD #450 envió Además, la Sra. Oshel envió un correo electrónico a Corey Hinton, trabajador social escolar, indicando:

> Estamos considerando la transición del estudiante de regreso a la escuela a tiempo completo y los servicios externos están preguntando si el psicólogo o los servicios sociales trabajador podría reunirse con ella para hablar sobre su ansiedad.

Además, USD #450 envió una carta fechada el 31 de marzo de 2022 a la familia describiendo los pasos previos tomados para mantener seguro al estudiante mientras estaba en la escuela.

El IEP del 27 de abril de 2021 establece: "Los padres recibirán informes escritos del progreso del estudiante hacia el cumplimiento de las metas anuales del IEP de acuerdo con el calendario de informes de calificaciones establecido por el distrito". La Sra. O'Brien indicó que la práctica de USD #450 es que los estudiantes de jardín de infantes a duodécimo grado reciban informes de progreso de la meta del IEP trimestralmente, que es el mismo período de tiempo que sus compañeros típicos reciben informes de calificaciones trimestrales. Sin embargo, la práctica de USD #450 es solo proporcionar informes de progreso de la meta del IEP al final de cada semestre y al final del año del IEP para estudiantes en el programa de transición de 18 a 21 años porque no hay un "calendario de informe de calificaciones establecido" para no discapacitados. compañeros de 18 a 21 años.

El informe de progreso de la meta del IEP del final del segundo semestre del año escolar 2020-21 estaba fechado el 28 de mayo de 2021 e indicaba que el estudiante estaba progresando adecuadamente para alcanzar la meta anual al final del año escolar. Año del IEP en abril de 2022. No se proporcionó ningún informe de progreso de la meta del IEP para el final del primer semestre del año escolar 2021-22. El próximo informe de progreso de la meta del IEP fue fechado el 21 de abril de 2022 e indicó que el estudiante cumplió con la meta anual pero notó "algunos problemas de asistencia/excelentes habilidades".

La reunión anual del equipo del IEP se llevó a cabo el 22 de abril de 2022 con la asistencia de los padres. El nivel actual de desempeño en ese IEP no menciona el incidente que ocurrió el 24 de septiembre de 2021 ni la respuesta del evento postraumático en curso del estudiante que resultó en una disminución significativa en la asistencia del estudiante. La meta del IEP se revisó de completar una tarea vocacional con un 80 % de precisión a un 90 % de precisión y los servicios y la ubicación se mantuvieron igual que el IEP del 27 de abril de 2021 a pesar de que el estudiante no había recibido ese nivel de servicios de educación especial durante más de siete años. meses del año escolar 2021-22.

Al final de la reunión del equipo del IEP del 22 de abril de 2022, se proporcionó al padre un Aviso previo por escrito (PWN) para la identificación, la colocación inicial de servicios, el cambio en los servicios, el cambio de colocación y la solicitud de consentimiento y un resumen de desempeño (SOP). Al igual que el IEP, el SOP no menciona el incidente del 24 de septiembre de 2021 y la respuesta posterior al evento postraumático que resultó en una caída significativa en la asistencia de los estudiantes. Se observa que el padre no firmó el PWN para la terminación de los servicios debido a que cumplió 21 años.

Regulaciones aplicables y conclusiones

Las regulaciones federales en 34 CFR 300.324(b)(1) requieren que los distritos escolares revisen el IEP del estudiante periódicamente, pero al menos una vez al año para determinar si se están logrando las metas anuales del estudiante y revisar el IEP, si corresponde, para abordar cualquier falta de progreso esperado hacia esas metas anuales, los resultados de cualquier reevaluación, cualquier información sobre el niño proporcionada a , o por los padres, las necesidades anticipadas del niño, u otros asuntos.

Las regulaciones federales en 34 CFR 300.321 describen al padre como un miembro requerido del equipo del IEP. Las regulaciones federales en 34 CFR 300.322 describen los pasos que los distritos escolares deben tomar para permitir que los padres tengan la oportunidad de participar

en el proceso del IEP. Ambas regulaciones reflejan el énfasis de IDEA en la participación de los padres en el proceso de toma de decisiones del IEP.

En este caso, el estudiante fue agredido en los terrenos de la escuela el 24 de septiembre de 2021 y, como resultado, sufrió una ansiedad extrema y trastornos del sueño que resultaron en una disminución significativa en la asistencia del estudiante. Después del incidente, la familia del estudiante indicó que el estudiante no regresaría a la escuela si se permitía que el otro estudiante regresara al campus. USD #450 disciplinó al otro estudiante pero le permitió regresar al campus pero en otro salón de clases para estudiantes de 18 a 21 años para separar a los dos estudiantes.

El estudiante estuvo ausente un total de 12 días escolares hasta que el maestro de educación especial pudo convencer a la madre de permitir que el estudiante asistiera a la escuela durante aproximadamente dos horas un par de días a la semana durante la actividad vocacional comunitaria en Meals-on- Ruedas con su madre y ocasionalmente se une a la clase después de esa actividad. El personal del distrito escolar creía que esta reducción en los servicios de educación especial daría como resultado que el estudiante se sintiera seguro en la escuela y eventualmente regresara al nivel de tiempo completo de los servicios de educación especial proporcionados antes del incidente. Los registros de asistencia muestran que la asistencia del día parcial del estudiante varió de un mínimo de 0 % en enero a un máximo de 50 % en marzo y que el estudiante no regresó a la escuela a tiempo completo hasta los últimos tres días del año escolar 2021-22.

Aunque varios miembros del personal del distrito tenían múltiples contactos continuos con la familia, el equipo del IEP nunca se reunió en su totalidad para discutir las preocupaciones de seguridad de los padres y desarrollar un plan coordinado para abordar la ansiedad y los déficits de visión/audición del estudiante como resultado de la rotura del anteojos y audífonos hasta la revisión anual del IEP el 22 de abril de 2022, siete meses después del incidente. El correo electrónico con fecha del 30 de marzo de 2022 de la Sra. Oshel al trabajador social de la escuela muestra que la escuela tenía conocimiento de la necesidad de asesoramiento como un servicio relacionado adicional.

Incluso con las mejores intenciones, el personal de la escuela presumía conocer tanto las necesidades del estudiante como las preocupaciones de los padres sin que estos tuvieran la oportunidad de compartir esta información con el equipo del IEP y desarrollar un plan para satisfacer las nuevas necesidades del estudiante. Parece que USD #450 identificó unilateralmente las necesidades de los estudiantes y las necesidades de los padres en base a la relación del maestro de educación especial con la familia. Sin embargo, estas necesidades nunca fueron discutidas ni abordadas por todo el equipo del IEP con el padre al que se le dio la oportunidad de participar en el proceso.

El distrito escolar cree que no hubo necesidad de convocar a todo el equipo del IEP cuando el padre y el representante de la LEA (el maestro de educación especial) estuvieron de acuerdo con los cambios realizados en el IEP, incluida una caída significativa en el nivel de los servicios de educación especial; sin embargo, el IEP del 27 de abril de 2021 nunca se enmendó con un acuerdo entre el representante de la LEA y el padre ni se le proporcionó al padre PWN para el cambio material de servicios y el cambio significativo de ubicación cuando el estudiante comenzó a asistir a la escuela de manera constante solo en un horario fijo. tiempo parcial desde el 14 de octubre de 2021 hasta el 24 de mayo de 2022.

La maestra de educación especial informó que compartió el plan de seguridad verbalmente con los padres en múltiples ocasiones; sin embargo, USD #450 no compartió este plan de seguridad por escrito con los padres hasta después de la reunión del 30 de marzo de 2022 con los padres y representantes de servicios comunitarios.

No fue hasta la reunión del 9 de diciembre de 2021 entre el padre, el administrador del caso objetivo y la Sra. O'Brien, que el distrito descubrió que el padre no había podido reparar los anteojos rotos ni los audífonos del estudiante. Se observa que USD #450 pagó para reemplazar los audífonos y anteojos de la estudiante que se rompieron durante el asalto del 24 de septiembre de 2021. Sin embargo, la estudiante estuvo sin sus audífonos durante aproximadamente cinco meses y estuvo sin sus anteojos durante aproximadamente siete. meses durante el año escolar 2021-22.

El USD #450 no volvió a convocar al equipo del IEP del estudiante para discutir el cambio material en los servicios y el cambio sustancial de ubicación que resultó de la respuesta postraumática del estudiante al asalto el 24 de septiembre de 2021, aunque hubo suficientes datos de registro de asistencia para sugerir la necesidad de El equipo del IEP se reunió para discutir las necesidades anticipadas de la estudiante, como asesoramiento o un plan de seguridad basado en su respuesta traumática al incidente del 24 de septiembre de 2021. Además, el equipo del IEP nunca se volvió a reunir para discutir los planes para adaptarse a la visión y la audición de la estudiante. deficiencias resultantes de la rotura de anteojos y audífonos que no fueron reemplazados hasta entre cinco y siete meses después de la agresión física.

Con base en lo anterior, se fundamenta una violación de los estatutos y reglamentos de educación especial por no revisar y revisar el IEP, según corresponda, debido a la necesidad de conocer y discutir las necesidades anticipadas del estudiante durante el año escolar 2021-22.

Las reglamentaciones federales en 34 CFR 300.320(a)(3) exigen que los distritos incluyan una declaración en el IEP que describa cómo se medirá el progreso del niño hacia el logro de las metas anuales y cuándo se presentarán informes periódicos sobre el progreso del niño hacia el logro de las metas anuales. será proporcionado.
El IEP del estudiante con fecha del 27 de abril de 2021 incluye una declaración de que los padres recibirán informes escritos del progreso del estudiante hacia el cumplimiento de las metas anuales del IEP de acuerdo con el calendario de informes de calificaciones establecido por el distrito; sin embargo, el plazo específico en el que USD #450 proporcionará estos informes de progreso de la meta del IEP no se establece en el IEP.
La Sra. O'Brien y la Sra. Osbourne explicaron que USD #450 tiene una práctica para proporcionar informes de progreso de la meta del IEP a los estudiantes en su programa de 18 a 21 años al final de cada semestre y al final del ciclo del IEP. La meta del IEP del estudiante contiene dos puntos de referencia que deben lograrse al final de cada semestre y al final del ciclo del IEP.

Con base en lo anterior, se justifica una violación de los estatutos y reglamentos de educación especial por no incluir una descripción de cuándo se proporcionarán a los padres los informes de progreso de la meta del IEP.

Acción correctiva La

información recopilada en el curso de esta investigación ha corroborado el incumplimiento de los estatutos y reglamentos de educación especial. Se han producido violaciones en las siguientes áreas:

A. Regulaciones federales en 34 CFR 300.323(c)(2) que requieren que los distritos escolares se aseguren de que tan pronto como sea posible después del desarrollo del IEP, la educación especial y los servicios relacionados estén disponibles para el niño de acuerdo con el IEP del niño. Además, las reglamentaciones estatales que implementan la Ley de Educación Especial para Niños Excepcionales de Kansas en KAR 91-40-19(a) requieren que cada distrito escolar, maestro y proveedor de servicios relacionados brinde educación especial y servicios relacionados al niño de acuerdo con las necesidades del niño. PEI.

En este caso, el USD #450 reconoció que no proporcionó la instrucción especializada a la estudiante durante el período de tiempo de aproximadamente 40 minutos cuando ella y el otro compañero esperaban en la puerta cerrada y sin la supervisión del personal del distrito escolar.

B. Regulaciones federales que implementan IDEA 34 CFR 300.324(b)(1) que requieren que los distritos escolares revisen el IEP de un estudiante periódicamente, pero al menos anualmente para determinar si se están logrando las metas anuales para el estudiante y revisar el IEP, si corresponde, en para abordar cualquier falta de progreso esperado hacia esas metas anuales, los resultados de cualquier reevaluación, cualquier información sobre el niño proporcionada a, o por los padres, las necesidades anticipadas del niño u otros asuntos.

En este caso, USD #450 no volvió a convocar al equipo del IEP del estudiante para discutir el cambio significativo en los servicios y la ubicación que resultó de la respuesta postraumática del estudiante al asalto el 24 de septiembre de 2021, a pesar de que había suficientes datos del registro de asistencia para sugerir la necesidad. para que el equipo del IEP se reúna para discutir las necesidades anticipadas de la estudiante, como asesoramiento o un plan de seguridad basado en su respuesta traumática al incidente del 24 de septiembre de 2021. Además, el equipo del IEP nunca volvió a reunirse para discutir los planes para adaptarse a la visión de la estudiante. y deficiencias auditivas resultantes de los anteojos y audífonos rotos, aunque estos dispositivos no fueron reemplazados hasta entre cinco y siete meses después de que se rompieron en la agresión física del 24 de septiembre de 2021.

C. Las reglamentaciones federales que implementan IDEA en las reglamentaciones de 34 CFR 300.320(a)(3) exigen que los distritos incluyan una declaración en el IEP que describa cómo se medirá el progreso del niño hacia el logro de las metas anuales y

cuándo se presentarán informes periódicos sobre el progreso del niño. hacia el cumplimiento de las metas anuales se proporcionará a los padres.

En este caso, USD #450 no incluyó una descripción de cuándo se proporcionarían a los padres los informes de progreso de la meta del IEP. En cambio, USD #450 tiene una práctica para proporcionar informes de progreso de la meta del IEP a los estudiantes en su programa de 18 a 21 años al final de cada semestre y al final del ciclo del IEP como su "calendario de informe de calificaciones establecido", que es menos frecuente que otros estudiantes en los programas de kínder a duodécimo grado del distrito.

Con base en lo anterior, se encamina a USD #450 a realizar las siguientes acciones:

1. Dentro de los 15 días calendario a partir de la fecha de este informe, USD #450 deberá presentar una declaración de garantía por escrito a los Servicios de Educación Especial y Título (SETS) declarando que:

a. Cumplir con las reglamentaciones federales en 34 CFR 300.323(c)(2) que requieren que los distritos escolares se aseguren de que tan pronto como sea posible después del desarrollo del IEP, la educación especial y los servicios relacionados estén disponibles para el niño de acuerdo con el IEP del niño como así como las reglamentaciones estatales que implementan la Ley de Educación Especial para Niños Excepcionales de Kansas en KAR 91-40-19(a) que requieren que cada distrito escolar, maestro y proveedor de servicios relacionados brinde educación especial y servicios relacionados al niño de acuerdo con las necesidades del niño. PEI.

b. Cumplir con las reglamentaciones federales que implementan IDEA 34 CFR 300.324(b)(1) que requieren que los distritos escolares revisen el IEP del estudiante periódicamente, pero al menos una vez al año, para determinar si se están logrando las metas anuales del estudiante y revisar el IEP, si corresponde. , para abordar cualquier falta de progreso esperado hacia esas metas anuales, los resultados de cualquier reevaluación, cualquier información sobre el niño proporcionada a los padres o por los padres, las necesidades anticipadas del niño u otros asuntos.

C. Cumplir con las reglamentaciones federales que implementan IDEA en las reglamentaciones de 34 CFR 300.320(a)(3) que requieren que el distrito incluya una declaración en el IEP que describa cómo se medirá el progreso del niño hacia el logro de las metas anuales y cuándo se presentarán informes periódicos sobre el progreso. el niño está haciendo para alcanzar las metas anuales se le proporcionará a los padres.

2. USD #450 revisará sus procedimientos y prácticas con respecto al "calendario de informe de calificaciones establecido" para proporcionar informes de progreso de la meta del IEP para estudiantes en el programa de 18 a 21 años. Con base en esa revisión, USD #450 desarrollará un cronograma de informe de calificaciones por escrito para los estudiantes en el programa de 18 a 21 años y revisará el formulario IEP modelo del distrito para incluir una descripción de cuándo se proporcionarán los informes de progreso de la meta del IEP. A más tardar el 1 de septiembre de 2022, USD #443 proporcionará a SETS una copia del formulario IEP revisado, una copia de este procedimiento escrito y documentación que demuestre que todo el personal y administradores de educación especial en los programas del distrito para niños de 18 a 21 años han recibió una copia del procedimiento establecido.

3. USD #450 volverá a convocar al equipo del IEP del estudiante a más tardar el 1 de septiembre de 2022 para ofrecer un mínimo de ocho meses de servicios compensatorios consistentes con los servicios descritos en el IEP del 22 de abril de 2022 a los padres a fin de brindar una educación pública adecuada y gratuita. (FAPE) al estudiante a la luz de la falta de proporcionar la instrucción especializada descrita en el IEP del 27 de abril de 2021 el 24 de septiembre de 2021 y la falta de volver a convocar al equipo del IEP de manera oportuna para revisar y revisar, si corresponde, el Metas del IEP y servicios de educación especial para abordar las necesidades cambiantes del estudiante como resultado de la respuesta postraumática del estudiante a la agresión física el 24 de septiembre de 2021. USD #450 hará todo lo posible para incluir representantes de los servicios comunitarios del estudiante en este Reunión del equipo del IEP con el consentimiento de los padres para brindarles a los padres ramificaciones claras de la continuación de los servicios basados en la escuela en los servicios para adultos del estudiante. USD #450 proporcionará a SETS una copia del plan escrito para proporcionar los servicios compensatorios ofrecidos y la decisión de los padres sobre si aceptar la oferta, en su totalidad o en parte, a más tardar 10 días a partir de la fecha de la reunión del equipo del IEP.

4. Además, USD #450 deberá, dentro de los 10 días calendario a partir de la fecha de este informe, presentar a los Servicios de Título y Educación Especial uno de los siguientes:

a) una declaración que verifique la aceptación de la acción o acciones correctivas especificadas en este informe;
b) una solicitud por escrito de una prórroga del tiempo para completar una o más de las acciones correctivas especificadas en el informe junto con la justificación de la solicitud; o
c) una notificación de apelación por escrito. Cualquier apelación de este tipo se hará de conformidad con KAR 91-40-51(f). Debido a las restricciones de COVID-19, las apelaciones pueden enviarse por correo electrónico a formalcomplaints@ksde.org o enviarse por correo a Special

Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Derecho de apelación

Cualquiera de las partes puede apelar los resultados o las conclusiones de este informe presentando una notificación de apelación por escrito ante el Comisionado de Educación del Estado, ATTN: Servicios de Títulos y Educación Especial, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612 -1212. El aviso de apelación también se puede presentar por correo electrónico a formalcomplaints@ksde.org El escrito de apelación deberá ser entregado dentro de los 10 días naturales siguientes a la fecha del presente informe.

Para obtener una descripción más detallada del proceso de apelación, consulte las Regulaciones Administrativas de Kansas 91-40-51(f), que se encuentran al final de este informe.

Nancy Thomas

Nancy Thomas, investigadora de quejas

KAR 91-40-5(f) Apelaciones.

(1) Cualquier agencia o denunciante puede apelar cualquiera de los hallazgos o conclusiones de un informe de cumplimiento preparado por la sección de educación especial del departamento mediante la presentación de una notificación de apelación por escrito ante el comisionado de educación del estado. Cada notificación se presentará dentro de los 10 días siguientes a la fecha del informe. Cada aviso deberá proporcionar una declaración detallada de la base para alegar que el informe es incorrecto.

Al recibir una apelación, el comisionado designará un comité de apelación de al menos tres miembros del departamento de educación para revisar el informe y considerar la información proporcionada por la agencia de educación local, el denunciante u otros. El proceso de apelación, incluida cualquier audiencia realizada por el comité de apelación, se completará dentro de los 15 días a partir de la fecha de recepción de la notificación de apelación, y se emitirá una decisión dentro de los cinco días posteriores a la finalización del proceso de apelación, a menos que el comité de apelación determine que existen circunstancias excepcionales con respecto a la queja en particular. En este caso, la decisión será dictada lo antes posible por el comité de apelación.

(2) Si un comité de apelación afirma un informe de cumplimiento que requiere una acción correctiva por parte de una agencia, esa agencia deberá iniciar la acción correctiva requerida de inmediato. Si, después de cinco días, no se ha iniciado ninguna acción correctiva requerida, se notificará a la agencia sobre la acción que se tomará para asegurar el cumplimiento según lo determine el departamento. Esta acción puede incluir cualquiera de las siguientes:

(A) la emisión de un aviso de deficiencia de acreditación;

(B) la retención de fondos estatales o federales de otro modo disponibles para la agencia;

(C) la concesión de un reembolso monetario al denunciante; o

(D) cualquier combinación de las acciones especificadas en el párrafo (f)(2)

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #443
ON JUNE 29, 2022

DATE OF REPORT JULY 27, 2022

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

The complaint is against USD #443 (Dodge City Public Schools) who contracts with the Southwest Kansas Area Cooperative (SKAC) to provide special education and related services to students enrolled in USD #443. In the remainder of the report, "USD #443," the "school," the "district" or the "local education agency (LEA)" shall refer to both of these responsible public agencies.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE received the complaint on June 29, 2022 and the 30-day timeline to investigate this complaint ends on July 29, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on July 7, July 19, and July 26, 2022. Trina Schmidt, Director of SKAC, was interviewed by telephone on July 18, 2022.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the LEA. The following documentation along with interviews were used as the basis of the findings and conclusions of the investigation.

- Assessment, Evaluation, and Programming System for Infants and Children (AEPS) Score Summary dated February 23, 2021
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated January 12, 2022
- Notification of Meeting to review the evaluation and determine eligibility scheduled for February 1, 2022
- Evaluation/Eligibility Report / Summary of Meeting dated February 1, 2022 which included the results of the Developmental Screening for Young Children, second edition (DAYC-2)
- Early Childhood Special Education Team Report dated February 1, 2022
- PWN for Identification, Initial Services, Educational Placement, Change in Services, Change of Placement, and Request for Consent dated February 1, 2022 refusing to find the student eligible for Part B services
- Kansas Infant and Toddler Services Individualized Family Service Plan (IFSP) dated February 23, 2022
- AEPS Score Summary dated February 23, 2022
- Email dated March 1, 2022 at 7:40 a.m. written by Deann Jones, Infant/Toddler Special Services Teacher at Arrowhead West, Inc. to Ms. Schmidt
- Email dated March 2, 2022 at 8:40 a.m. written by Andrea Keeler, School Psychologist at SKAC, to Ms. Schmidt
- Email dated March 9, 2022 at 2:24 p.m. written by the parent to Ms. Schmidt
- Early Childhood Outcome (ECO) Summary dated March 10, 2022
- Meeting Notes dated March 10, 2022 written by Ms. Schmidt
- PWN refusing to conduct an evaluation or reevaluation dated March 10, 2022
- Meeting Notes dated March 31, 2022 written by Ms. Schmidt
- Email dated April 7, 2022 at 6:00 p.m. written by Ms. Schmidt to Cheryl Christensen, Bilingual Speech/Language Pathologist (SLP)
- Email dated April 8, 2022 at 9:28 a.m. written by Ms. Christensen to Ms. Schmidt
- Screening Report dated April 29, 2022 written by Ms. Christensen
- Email dated June 14, 2022 at 11:59 a.m. from the parent to Ms. Schmidt
- Email dated June 14, 2022 at 3:04 p.m. from Ms. Schmidt to the parent
- Email dated June 20, 2022 at 8:23 a.m. from Ms. Schmidt to the parent
- Email dated June 20, 2022 at 3:00 p.m. from the parent to Ms. Schmidt

- PWN for Evaluation or Reevaluation and Request for Consent dated June 22, 2022
- Authorization of Disclosure (Records Release) between SKAC and Dr. Janine Kesterson-Cravens, School Psychologist (Independent Evaluator), signed by the parent on June 28, 2022
- Email dated June 29, 2022 at 9:24 a.m. from Dr. Kesterson-Craven to Ms. Schmidt
- Email dated June 29, 2022 at 11:09 a.m. from Ms. Schmidt to Dr. Kesterson-Cravens
- Email dated June 29, 2022 at 11:35 a.m. from Dr. Kesterson-Cravens to Ms. Schmidt
- Email dated July 12, 2022 at 11:40 a.m. from the parent to Ms. Schmidt
- Email dated July 12, 2022 at 11:54 a.m. from Ms. Schmidt to the parent
- Email dated July 12, 2022 at 12:04 p.m. from the parent to Ms. Schmidt
- Email dated July 12, 2022 at 12:33 p.m. from Ms. Schmidt to Sandra Padmanahan, School Psychologist (Independent Evaluator)
- Timeline of Events between January 12, 2022 and July 12, 2022 written by Ms. Schmidt
- Kansas Association of School Psychologists (KASP) Independent Evaluators List for western Kansas

Background Information

This investigation involves a three-year-old male student who lives at home with his parents and older brother in the USD #443 school district. He was found eligible for IDEA Part C early intervention services on February 23, 2021due to developmental delays in cognitive, social, and language skills. He has a medical history of heart problems including two heart murmurs, holes in his heart, and rapid heartbeat as well as seizures. He is followed by a neurologist and does not take any medication at this time. The initial Individualized Family Services Plan (IFSP) was developed on February 23, 2021 and implemented through an agency providing early interventions services to infants and toddlers through the Kansas Department of Health and Environment, Arrowhead West, Incorporated.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon an interview and the written complaint, the parent raised one issue that was investigated.

> ISSUE ONE: The USD #443, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate evaluation procedures when it failed to identify the student as a student with a disability during the past 12 months.

Positions of the Parties

The mother reported that USD #443 conducted an evaluation to determine eligibility for IDEA Part B Early Childhood Special Education services when the student was two years and 10 months old. Despite the recommendations for continued language services from the student's neurologist and not meeting his IFSP goals, USD #443 determined the student was not eligible for Part B early childhood special education services beginning at age three. The parent believes the evaluation conducted by USD #443 was incomplete and was not an accurate reflection of the student's developmental delays.

She reported that she made a request for an independent educational evaluation (IEE) in March and met with the special education director twice that month to discuss her concerns. The mother reported that the student was re-screened by a bilingual speech/language therapist and was again not eligible for special education services. A second request for an IEE was made in June and the parent acknowledged that an IEE is currently in process.

USD #443 reported that the district followed the appropriate evaluation procedures for the student who was transitioning from the Part C early intervention program. The student was evaluated and eligibility determined prior to his third birthday; however,

no IEP was developed because the multidisciplinary team found that the student did not meet the Part B eligibility criteria for having a disability in Kansas.

The parent did not agree with this determination and expressed concern that the student had not been evaluated in the area of speech. Trina Schmidt, Director of Special Education at SKAC, met with the parent twice in March to review the evaluation, explain the evaluation process, and clarify the Part B eligibility criteria and why the student did not meet those eligibility criteria. School staff reported that mom decided she did not want an IEE but instead wanted an additional speech/language screening with a bilingual speech/language pathologist. School staff made arrangements for this screening and provided the parent with prior written notice refusing her request for an evaluation. The screening was conducted at the end of April, and results showed the student's articulation errors were developmentally appropriate for his age and that he was not suspected of having a disability and being in need of special education services.

The parent again requested an IEE on June 14, 2022 and the district is in the process of conducting the IEE and currently working with the parent to identify an independent evaluator from the list provided by the Kansas Association of School Psychologists (KASP).

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #443.

The student was initially evaluated and found eligible for Part C early intervention services on February 23, 2021due to at least a 20% developmental delay in each of the areas of cognitive, social, and language skills. The IFSP required 60 minutes per month of special instruction and 60 minutes per month of family services coordination. The student received these services from Deann Jones, Early Childhood Special Educator at Arrowhead West, Inc. through his third birthday on March 10, 2022.

A transition conference was held on November 10, 2021 with the parent, Part C staff from Arrowhead West, Inc. and Part B staff from USD #443. The school district provided the parent with a prior written notice (PWN) for an initial special education

evaluation with assessment in the areas of general intelligence, social/emotional/behavioral, communication, and academic performance and request for consent on January 12, 2022. Documentation shows the parent gave consent for the evaluation on that same date; however, the mother stated that she was not included in any review of existing data to determine the areas to be evaluated prior to receiving the January 12, 2022 PWN.

An eligibility determination meeting was held on February 1, 2022 with the parent and USD #443 staff in attendance. It is noted that the Part C representative, Ms. Jones, was invited to this meeting at parent request but that she was not able to attend due to a medical emergency.

The Evaluation/Eligibility Report dated February 1, 2022 summarized results of a record review of the Assessment, Evaluation, and Programming System for Infants and Children (AEPS) from February 23, 2021 which assessed fine and gross motor, cognitive, adaptive behavior, communication, and social skills development; and the Early Childhood Outcomes (ECO) Summary which assessed positive social relationships, acquiring and using knowledge and skills, and taking action to meet needs. The report also included the results of the Developmental Assessment of Young Children - second edition (DAYC-2) which evaluated the areas of cognitive, social/emotional, and communication as well as observations in multiple environments and relevant medical information.

After reviewing this information, the multidisciplinary team, including the parent, determined the student did not meet the eligibility criteria to be identified as a child with a disability in Kansas. USD #443 provided the parent with a PWN dated February 1, 2022 refusing to identify the child as having a disability and being in need of special education under Part B of the IDEA.

The IFSP dated February 23, 2022 documents that the parent was not in agreement with the eligibility determination and that she wanted the student to receive services through USD #443's special education early childhood program.

On March 1, 2022, Ms. Jones, Infant/Toddler Special Services Teacher at Arrowhead West, Inc. sent an email to Ms. Schmidt describing the parent's concerns in regards to

the evaluation and sharing the results of most recent AEPS completed on February 23, 2022. Ms. Jones stated:

> I understand that based on the scores from the DAY-C, he did not show delays of -2.0 S.D. [standard deviations] in one area or -1.5 S.D. [standard deviations] in two areas. Mom and I discussed recent results of his AEPS that generated in his new assessment. He scored way below the cut-off in communication and socialization based on our recent testing. These are the two areas that mom has always expressed concerns with in his overall development. She also expressed to me that she does not understand him when he is using the words that he knows. I reviewed the report and did not see any articulation testing. I know he is just now building a language base and articulation is not always addressed; however, this is something that mom is questioning. I know criteria is different for both programs; however, I wanted to let you know that mom wants to pursue the issue of his ineligibility. I'm not sure how or if you want to pursue it. Mom would like to get a second opinion on his test scores. She would also like for him to have an articulation test. Based on the procedural safeguards, she would like to request an independent education evaluation.

On March 9, 2022 at 3:25 p.m., the mother sent an email to Ms. Schmidt stating, "I am requesting an independent education evaluation for my son, the student, date of birth 03-10-19. He was found ineligible for services and I would like a copy as soon as possible of board policy for parents on how to get an independent education evaluation."

Ms. Schmidt met with the mother on March 10, 2022. Notes from that meeting reflect that the mother "agreed to have another SLP [speech/language pathologist], preferably bilingual, to rescreen the student instead of a full Independent Education Evaluation." Following this meeting, USD #443 mailed the parent a PWN refusing to conduct an evaluation on March 10, 2022. The PWN states that doing a complete evaluation was considered but rejected because the parent was mostly concerned with the speech/language part of the evaluation and wanted a screening with a bilingual SLP to

rule out any impact of second language influence on his communication skills and to assess his articulation skills.

On March 31, 2022, Ms. Schmidt again met with the mother and father of the student to discuss their concerns. Ms. Schmidt's notes from that meeting state:

> Met with mom and dad to discuss the evaluation results. I asked a lot of questions regarding the dr. [sic] notes. I asked when he was diagnosed autistic and by whom? The reply was AWI [Arrowhead West Incorporated]. I explained the identification process. Mom explained the student's history of seizures.

The mother confirmed attendance at this March 10, 2022 meeting but did not recall the discussion about the speech screening happening at that time. She reported that the discussion actually occurred at a second meeting with Ms. Schmidt on March 31, 2022. The parent indicated that she and her husband did agree to have Cheryl Christensen, Bilingual SLP, re-screen the student at the March 31, 2022 meeting but believed this was the IEE that had been requested.

An email dated April 7, 2022 written by Ms. Schmidt to Cheryl Christensen, Bilingual SLP, stated, "I just spoke to the mother of the student, and she would like for you to screen her son." On April 8, 2022, Ms. Christensen responded stating that an appointment had been scheduled for April 29, 2022.

The April 29, 2022 report written by Ms. Christensen is titled "Speech/Language Screening Report" but refers to the report as "this evaluation". The report also includes additional medical concerns shared by the parent including the diagnosis of autism and a history of ear infections and pressure equalization tubes. Results of the play-based screening showed that expressive, receptive, and pragmatic language skills fell within normal limits for his chronological age. Ms. Christensen indicated that "Although his speech output was limited, he produced nearly all the age-appropriate phonemes." The report concluded that the student did not present with a significant delay and that "speech/language therapy is not appropriate at this time".

The mother emailed Ms. Schmidt on June 14, 2022 at 11:59 a.m. and again requested an IEE for the student. On June 20, 2022, USD #443 responded to the parent's request in an email stating, "There are three names for the western part of Kansas who are

listed as Independent Evaluators. Please select a name and I will then send you a PWN for evaluation and with the details of SKAC paying for the evaluation."

The parent initially chose Samantha Hernandez to conduct the IEE and USD #443 provided the parent with PWN for an evaluation with assessment in the areas of general intelligence, academic performance, and communication and a request for consent on June 22, 2022. However, Ms. Hernandez did not respond to the district's emails attempting to contract for her services.

The parent then chose Janine Kesterson-Cravens to conduct the IEE. Ms. Kesterson-Cravens initially accepted the offer to conduct the IEE and the parent provided written consent for the evaluation on June 28, 2022. USD #443 then provided the evaluator copies of student records with parent consent on July 8, 2022. On July 12, 2022, the mother informed Ms. Schmidt that Dr. Kesterson-Cravens was unwilling to conduct the speech/language part of the evaluation.

The parent then chose Samantha Padamanahan to conduct the IEE. Ms. Schmidt is currently working to arrange for the IEE contract with Ms. Padmanahan. The parent acknowledged that the IEE is in process at this time.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.124 require that students receiving Part C early intervention services are evaluated and, if determined eligible for Part B early childhood services, have an IEP or IFSP in place by the child's third birthday.

In this case the parent signed consent for an evaluation on January 12, 2022 and an eligibility determination meeting was held on February 1, 2022. The team determined that the student did not meet the eligibility criteria to be identified as a student with a disability and to be in need of special education and related services on that date. No IEP was developed prior to the student's third birthday because the student was ineligible for early childhood special education services. Based on the foregoing, USD #443 did meet the requirement to evaluate and determine eligibility for the student prior to his third birthday on March 10, 2022.

Federal regulations at 34 C.F.R. 300.304(c)(6) require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs. The IDEA describes the term "sufficiently comprehensive" in the federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1) which require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. This review of existing data may be conducted either with or without holding a meeting.

On the basis of that review and input from the child's parents, federal regulations implementing the IDEA at 34 C.F.R. 300.305(a)(2) require school districts to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related services; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. This review of existing data process ensures that all relevant information is collected from all parties and that a comprehensive evaluation can be completed.

In this case, the parent had expressed on-going concerns with speech articulation to Ms. Jones, the Part C case manager and service provider, since beginning early intervention services in February 2021. The parent reported she was not included in any review of existing data held and, as a result, the student's speech articulation skills were not assessed until April 29, 2022 through the speech screening conducted by Ms. Christensen. Based on the parent's long-standing concerns with speech articulation, it appears that the evaluation was not sufficiently comprehensive to identify all of the student's special education needs as required by federal regulations at 34 C.F.R. 300.304(c)(6).

Federal regulations at 34 C.F.R. 300.502 (a) require that each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations.

Federal regulations at 34 C.F.R. 300.502(b)(2) require school districts to take one of the following steps, without unnecessary delay, when a parent requests an IEE at public expense: 1) Initiate a due process hearing to show that the school's evaluation was appropriate; OR 2) Ensure the IEE is provided at public expense by either paying the full cost of the IEE unless a due process hearing found that the evaluation obtained by the parent does not meet the school district's criteria. These are the only two options available to school districts when they receive a parent request for an IEE.

In this case, the parent requested an IEE on March 9, 2022 and the district responded by meeting with the parent on March 10, 2022 to discuss the request. Following that discussion, USD #443 reported that the parent withdrew her request for an IEE and USD #443 mailed the parent a PWN refusing to conduct the IEE. However, there is no written documentation showing that the parent withdrew her consent for an IEE and the parent indicated re-screening was not agreed to until the second meeting with Ms. Schmidt on March 31, 2022.

Failing to appropriately respond to the parent's request for an IEE caused significant miscommunication and confusion between the parent and the LEA. The parent believed the "re-screening" suggested by Ms. Schmidt and conducted by Ms. Christensen was actually a second independent evaluation of the student which was reinforced by the report's conclusion that "speech/language therapy is not appropriate at this time" and the fact that the report refers to itself as both a "screening" and an "evaluation".

It is noted that USD #443 responded appropriately by providing the list of independent evaluators and details of SKAC paying for the evaluation when the parent again requested an IEE on June 14, 2022. Both Ms. Schmidt and the mother agreed that they were in the process of conducting the requested IEE.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following areas:

A. Federal regulations at 34 C.F.R. 300.304(c)(6) which require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs and federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1-2) which require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. The review of existing data may be conducted either with or without holding a meeting and ensures that a comprehensive evaluation can be conducted to address all areas of concern.

   In this case, the USD #443 did not include the parent in the review of existing data prior to providing the parent with PWN for an evaluation and request for consent. This resulted in the initial special education evaluation not including additional assessment in the area of speech articulation and the evaluation was not comprehensive enough to identify all of the student's special education and related service needs.

B. Federal regulations implementing the IDEA 34 C.F.R. 300.502(b)(2) require school districts to take one of the following steps, without unnecessary delay, when a parent requests an IEE at public expense: 1) Initiate a due process hearing to show that the school's evaluation was appropriate; OR 2) Ensure the IEE is provided at public expense by either paying the full cost of the IEE unless a due process hearing found that the evaluation obtained by the parent does not meet the school district's criteria.

   In this case, the parent initially requested an IEE on March 9, 2022. The district responded by meeting with the parent and suggesting a "re-screening" on March 10, 2022 and subsequently mailing the parent a PWN refusing to conduct an evaluation. There is no written documentation showing that the parent withdrew her request for an IEE. In addition, based on the parent interview, the "re-screening" was considered a second IEE by the parent. It is noted, however, that USD #433 did respond appropriately to the parent's request for an IEE on June 14, 2022 by providing the list of independent evaluators and proceeding with conducting the IEE at public expense.

Based on the foregoing, USD #443 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #443 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

   a. Comply with federal regulations at 34 C.F.R. 300.304(c)(6) which require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs and federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1-2) which require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers in order to

identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. This review of existing data can be conducted with or without a meeting.

b. Comply with Federal regulations implementing the IDEA 34 C.F.R. 300.502(b)(2) which require school districts to take one of the following steps, without unnecessary delay, when a parent requests an IEE at public expense: 1) Initiate a due process hearing to show that the school's evaluation was appropriate; OR 2) Ensure the IEE is provided at public expense by either paying the full cost of the IEE unless a due process hearing found that the evaluation obtained by the parent does not meet the school district's criteria.

2. USD #443 shall review its procedures and practices with regards to conducting the required review of existing data. Based upon that review, USD #443 shall develop written procedures which will include a method to document that all relevant IEP team members, including the parents, participated in the review of existing evaluation data, either with or without a meeting, for the child in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. No later than September 1, 2022, USD #443 will provide SETS with a copy of this written plan for approval and a plan to disseminate this new procedure to all special education staff and administrators. Once the written plan has been approved by SETS, USD #443 shall implement the dissemination plan and provide documentation that all special education staff and

administrators have received a copy no later than 30 days following the approval date.

3. USD #443 shall review its procedures and practices with regards to appropriately responding to a parent request for an IEE and, based upon that review, USD #443 shall develop written procedures for responding appropriately. No later than September 1, 2022, USD #443 will provide SETS with a copy of this written plan for approval and a plan to disseminate this new procedure to all special education staff and administrators. Once the written plan has been approved by SETS, USD #443 shall implement the dissemination plan and provide documentation that all special education staff and administrators have received a copy no later than 30 days following the approval date.

4. USD #443 will ensure that the student's IEE is completed and eligibility for special education is determined. If the student is found eligible for special education and related services, the IEP team will determine if the delay in not responding appropriately to the first parent request for an IEE on March 9, 2022 resulted in a denial of a free appropriate public education (FAPE) and determine what compensatory services, if any, are required; and, if compensatory services are offered, the parent's decision on whether to accept the offer, in whole or in part, no later than 10 days from the date of the IEP team meeting.

5. . USD #443 shall provide SETS with meeting notes documenting the discussion and the parent's decision no later than 10 days from the date of the IEP team meeting.

6. Further, USD #443 shall, within 10 calendar days of the date of this report, submit to 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). Due to COVID-19 restrictions, appeals may either be

emailed to formalcomplaints@ksde.org or mailed to Special Education and Title Services, 900 SW Jackson St, Ste. 602, Topeka, KS, 66612.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas

Nancy Thomas, Complaint Investigator

K.A.R. 91-40-5(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)