Special Education Formal Complaint Decisions 2022-23

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, 23FC01 signifies a Formal Complaint filed in the 2023 state fiscal year (July 1, 2022 to June 30, 2023). The case citation of 23FC02 Appeal Review signifies the decision of the state appeal committee for case number 23FC02. All files are PDF.

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KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #501
ON JULY 11, 2022

DATE OF REPORT: AUGUST 9, 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 July 15 and August 3, 2022. On July 14, 20 and 26, 2022, the investigator spoke via telephone with Donna Whiteman, General Counsel for USD #501.

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

- General Education Intervention Referral dated January 28, 2020
- General Education Intervention Plan – Review dated January 7, 2021
- Attendance History for the student covering the period of January 21, 2021 through May 24, 2022
- General Education Intervention Plan – Review dated August 20, 2021 (reviewed again on October 1, 2021)
- General Education Intervention Plan – Review dated March 4, 2022
- Email dated March 8, 2022 from the principal to the parent
- Email exchange dated March 31, 2022 between the principal and the parent
- Handwritten request from the parent for the student to be "tested for Special Ed" dated April 1, 2022
- Referral Form for Special Education Comprehensive Evaluation 2021-22 dated April 1, 2022
- Letter dated April 5, 2022 from the assistant principal to the parent
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated April 7, 2022

- Notice – Short Term Suspension dated April 14, 2022
- Email dated April 14, 2022 from the principal to the assistant principal
- Success Plan #1 dated April 18, 2022
- Email exchange dated April 18, 2022 between the principal and the assistant principal
- Parental Concern Intake Form Office of the Ombudsman dated April 28, 2022
- Email exchange dated May 3, 2022 between the building principal and the ombudsman
- Final Intake Report Office of the Ombudsman dated May 3, 2022 and revised on May 4, 2022
- Notice of Meeting dated May 6, 2022
- Multidisciplinary Evaluation Report dated May 16, 2022
- Complex Behavior FBA dated May 16, 2022
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated May 16, 2022
- IEP for the student dated May 16, 2022
- Student Handbook for the student's school for the 2022-23 school year

Background Information

This investigation involves a 9-year-old boy who was enrolled in the third grade in his neighborhood school at the time of the incidents described in the parent's complaint.

The student was first referred for General Education intervention (GEI) on January 28, 2020. While academic progress had been seen, the student continued to perform below grade level in both math and reading. He had also been exhibiting behaviors in the classroom that were impeding his learning. A "Consulting Teacher," a school psychologist, a social worker, a counselor, an "Interventionist," and building principals had been members of the GEI team addressing the student's issues.

As of August 20, 2021, the GEI Plan for the student included daily small group support for reading for 20 minutes and 15 minutes of small group support daily to work on addition. The plan was reviewed on October 1, 2021. At that time, the student was moved to a more individualized small group for reading and he received 30-minutes of support twice a week. His math support was changed to 30 minutes a day to focus on subtraction. As of December 14, 2021, the GEI Plan included 20 minutes of counseling support once a week.

By March 4, 2022, GEI records indicate that the student "will shut down and has a difficult time resettling as well. He seems to want the attention no matter what it is,

whether it is negative or positive…We are going to have the parent and teacher fill out the Vanderbilt ADHD screener to give to the doctor."

The student was referred by the parent for a special education evaluation on April 1, 2022. The parent and the school had communicated about general education interventions throughout the 2021-22 school year and the parent had several telephone conversations with staff about the student's behavior during his school days. At the time of the student's referral, he had not been given any in-school or out-of-school suspensions.

On April 11, 2022, the district provided the parent with prior written notice of its proposal to conduct a special education evaluation. On April 12, 2022, the parent gave her written consent for the evaluation to be completed.

The student was determined to be eligible for and in need of special education services on May 16, 2022 under the category of Specific Learning Disability. An IEP was then developed for the student. According to the IEP, the student would receive special education "inclusion" support in the general education classroom for 110 minutes a day, 5 days a week. The student would also receive 60 minutes of resource/pull-out support in a special education setting for 5 days a week. Social work services would be provided for 20 minutes every other week. Goals were established in the areas of reading, math, written language, and behavior. The student's IEP also included a Behavior Intervention Plan.

The district provided the parent with prior written notice of its proposal to provide the special education services described above on May 17, 2022. On May 18, 2022, the parent gave her written consent for the district to provide those services.

The parent has requested a transfer for the student. That transfer has been approved, and the student will be attending a new school for the 2022-23 school year. A tour of the new school is scheduled for the student for August 8, 2022, and the parent and school staff have discussed plans to schedule an IEP team meeting shortly thereafter.

Issues

In her complaint, the parent listed two concerns. Under the second concern, the parent identified two separate issues. For clarity, those issues are listed separately below as Issue Two and Issue Three.

Issue One: The district failed to follow the behavior plan developed in a meeting on April 18, 2022.

Applicable Statutes and Regulations

At K.A.R. 91-40-5, Kansas regulations state that, in filing a formal complaint, a parent must allege that the district has violated a special education law or regulation.

Parent's Position

The parent alleges that on April 27, 2022 the student's classroom teacher failed to follow a behavior plan that had been developed by a school team on April 18, 2022. It is the parent's position that the teacher removed ear buds from the student's ears even though the behavior plan prohibited staff from engaging in any physical contact with the student if he failed to comply with a teacher direction. The parent contends that the teacher's actions resulted in physical injury to the student. According to the parent, she was not contacted by the school at the time of the incident even though the behavior plan required the district to notify the parent in the event that "any disciplinary action" against the student would be taken.

District's Position

The district did not provide a written response to this issue.

Investigative Findings

On Thursday, April 14, 2022, the student received a one-day suspension from school as a disciplinary consequence for "insubordination – consistent" and "failure to serve disciplinary consequences" (in-school suspension on April 13, 2022). According to a notice regarding the suspension dated April 14, 2022,

> "During yesterday's ISS [in-school-suspension], [the student] consistently did not comply with rules (out of seat, playing at recess, walking around classroom). In addition, teacher reported several Kindergartners were crying because [the student] called them "stupid." Today, there have had to be several redirections given due to insubordination and [the student] has not complied."

The student was allowed to return to school on April 18, 2022. On that date, a meeting was held to develop a "Success Plan" for the student's return to school. According to the district, it is established practice for such plans to be developed any time a student

returns to school following a suspension. The development of a success plan is not considered a special education action.

Both the parent and the student were present when the plan was developed as were a building administrator, classroom teacher, a paraeducator, and another individual whose role is not indicated. At the meeting, the team developed a plan that outlined responsibilities for the school, parent, and student.

According to the Success Plan, the school's responsibilities included the following:

1. Provide the student with consistent and specific positive praise when he is doing well.
2. Give the student a directive and wait for him to respond to the directive before restating the directive.
3. Maintain a calm tone of voice when he is upset/frustrated.
4. Avoid getting into power struggles with the student when he is upset.
5. Offer the student help or modify the assignment if it is a trigger.
6. Offer the student calm down time when he is becoming frustrated. The time that he has to be able to calm down will be communicated to the student.
7. Debrief with the student after his calm down time and use corrective teaching to discuss alterative choices that could have been made when he was frustrated.
8. Staff will praise the student for making it right and remind him of strategies to use when he is frustrated.
9. The school will continue to hold the student responsible for the decisions he makes. This can include rewarding positive behaviors as well as providing consequences for undesirable actions to include, but are not limited to, Kelso's Academy, in-school suspension, and out-of-school suspension.

On April 27, 2022, the student returned to his classroom with candy in his mouth – a reward from the reading specialist whose classroom he had just left. When his classroom teacher asked him where he had gotten the candy, the student refused to respond and placed his earbuds in his ears. The teacher removed the earbuds. That action resulted in the student being struck in the eye. According to the parent, she was not informed about the incident by the school at the time.

After learning about the incident, the parent filed a report with the city police department asserting that the teacher had assaulted the student. The city police department directed the parent to the public-school police department since the reported incident occurred on district property.

On April 28, 2022, the parent contacted the office of the ombudsman for the district and filed a complaint regarding the April 27th incident. The parent kept the student out of school on April 28 and 29, 2022 so that – in the words of the parent - the district could create a "behavior plan" for the teacher.

According to a report from the ombudsman for the district, the teacher and a paraeducator met on May 2, 2022 to discuss a "specific plan for the student's success." A revised Success Plan was sent to the parent via email on May 2, 2022 for her review. The parent rejected the proposed revision in an email on May 3, 2022.

According to the ombudsman's report, the parent's complaint has been assigned a case number and was as of May 4, 2022 "in the hands of the [school district police] for investigation."

Summary and Conclusions

In this issue, the parent alleges a failure on the part of the district to follow a "behavior plan" that had been developed on April 18, 2022. The plan developed on that date was a "Success Plan" – a plan developed by the district when students return to school following suspension. The plan is designed to facilitate the student's return to the general education environment following a disciplinary consequence.

The student had not – at the time the first Success Plan was developed on April 18, 2022 nor when the Success Plan was subsequently revised and submitted for the parent's review on May 3, 2022 – been determined to be an exceptional child. The student's eligibility for special education services was not determined until May 16, 2022, and the IEP for the student was not finalized until May 18, 2022. Neither version of the Success Plan was incorporated into the student's IEP.

The parent filed complaints with regard to the incident of April 27, 2022 with both the city and district police. The district police have assigned a case number to the complaint which is under investigation by their agency.

While the behavior plan that is included in the student's IEP does require contacting the parent regarding behavioral incidents (see Issue Two below), the student had not at the time of the April 27, 2022 incident described in this issue been determined to be a child with an exceptionality. No IEP was in place for the student. The requirements of the behavior plan established in the student's May 16, 2022 IEP do not govern the actions of

the district with regard to the Success Plan which was intended to help the student return to the general education environment after his suspension.

Special education statutes and regulations do not address the development or implementation of general education plans such as this district's Success Plan. The authority of a complaint investigator is limited to the investigation of the implementation of special education statutes and regulations and does not allow an inquiry into issues that are not covered under those laws. Therefore, once the investigator determined that the Success Plan was not a special education or related service to which the student was entitled, no further investigation was conducted. *No* violation of special education statutes and regulations was identified with regard to this issue.

Issue Two: The district failed to follow the behavior plan established 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.

Parent's Position

The parent asserts that the district did not contact her regarding the student's behavior as is required by the student's behavior plan. The parent further contends that school staff members have been instructed not to contact the parent directly and to route all communication through building administration or district leadership.

It is also the position of the parent that the district continued to allow classmates to bring work to the student when he had been removed from the classroom even though the student's behavior plan specifically prohibited the delivery of materials by other students.

District's Position

The district did not provide a written response to this issue.

Investigative Finding Regarding the Reporting of Student Behaviors to the Parent

Under the heading "Reactive Strategies," the "Behavior Intervention Plan" section of the student's May 16, 2022 IEP contains the following statements:

> "Describe student during De-escalation phase: [The student] will often fidget or cry and want to call his mom.
>
> Reactive Strategies: Once [the student] has calmed, assigned staff member will call the parent and debrief them on the situation along with documenting the incident in [the student's] behavior sheet."

The Daily Point Sheet for the student for May 18, 2022 shows that he engaged in a number of inappropriate behaviors including not following directions, not attending to task, and disrupting class. According to the point sheet, the student yelled, walked away from his seat, and walked around the classroom with scissors.

On May 20, 2022, the point sheet for that date shows that the student again failed to follow directions, disrupted class, and threw an ice pack at another student.

The point sheet completed for May 23, 2022 shows that the student did not follow directions on numerous occasions throughout the day. He often did not attend to task and disrupted class. The point sheet shows that he yelled three times and argued once. He was disrespectful once, hit once, kicked once, and lied once. Notes on the point sheet indicate that he threw a pencil when he felt a task was too hard. He sang loudly and talked "across the room" during a quiet time.

According to the district, the assistant principal was identified as the designated contact person for the parent in late April of 2022. Prior to that time, the building principal or the Consulting Teacher had served as the primary contact for the parent.

The parent reports that she had received calls regarding the student's behavior from a number of people prior to the April 27, 2022 incident described above under Issue One. According to the parent, she had previously received calls from the classroom teacher, the paraeducator, the consulting teacher, the principal, and the assistant principal, but

after she filed a complaint with the city and district police, staff were directed to channel communication with the parent through building administration.

Though not explicitly stated in the student's behavior plan, it was the understanding of the parent that she would be contacted if the student's behavior resulted in him missing out on more than 10 minutes of instruction. The parent asserts that no one from the school contacted her about the student's behavior on any of the three days identified in this complaint even though the point sheets clearly reflect that he missed out on more than 10 minutes of instruction on two of the three days. While the student's behavior was documented on a point sheet on these three days as required by the student's IEP, the district provided no evidence to show that the assistant principal or any other staff member contacted the parent on May 18, 20, or 23, 2022 to brief her on the student's behavior.

Summary and Conclusions Regarding the Reporting of Student Behaviors to the Parent

The IEP does not reflect a clear meeting of the minds between the district and the parent regarding what would trigger a call to the parent to inform her about the student's behavior and who the assigned staff would be to place that call. While the parent believed that she would be called if the student's behavior led to him missing more than 10 minutes of instruction, that level of specificity is not included in the student's IEP. The Behavior Intervention Plan included in the student's May 16, 2022 IEP requires that an "assigned staff member will call the parent and debrief them on the situation along with documenting the incident on [the student's] behavior sheet, but that "assigned staff member" is not identified.

While the district did complete a behavior sheet for each of the three days in question, no evidence was provided to show that on May 18, 20, or 23, 2022 any "assigned staff" member contacted the parent to brief her on the student's behavior as is required by the student's IEP. A violation of special education statutes and regulations is substantiated on this issue.

Investigative Findings and Conclusions Regarding Delivery of Assignment by Classmates

According to the parent, the student was upset by having another student bring him materials and assignments when he had been removed from the classroom because of inappropriate behavior. The parent reports that the student making the delivery would

sometimes tease the student, and a confrontation would ensue. The parent reports that she had requested that materials no longer be brought to the student by another child, and the district had agreed to that request. The parent believed that this restriction was added to the Behavior Plan in the student's May 16, 2022 IEP.

While the district does not dispute it agreed that peers were not to deliver materials to the student, the Behavior Plan in the student's May 16, 2022 IEP does not specifically include that limitation.

The parent did not provide any additional facts in support of her contention nor any specific evidence to show when or how the district failed to follow the student's Behavior Plan with regard to this issue. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Three: By refusing to allow the parent to move throughout the student's school without an escort, the district has retaliated against the parent for filing a complaint with the city and district police.

Parent's Position

The parent asserts that the building principal treated her "like a terrorist" when he insisted that he escort her to the student's classroom while allowing other parents to move through the building unescorted.

District's Position

The district did not provide a written response to this issue.

Applicable Statutes and Regulations

Special education laws provide parents with a number of safeguards to ensure their meaningful participation in making decisions regarding the evaluation and special education eligibility determination for their children. Districts must ensure that parents have the opportunity to be members of the IEP team that makes decisions on the placement of their child and the provision of special education and related services to their child.

However, neither federal or state laws nor regulations give parents the right to observe their children in class. While a district may give a parent permission to observe a child in

class if doing so would not disrupt school activities and would help the district and the parent work together to develop an appropriate IEP, there is no legal obligation for that to occur. Many districts have policies that define the conditions under which parents and others may observe children in school and they may establish practices that restrict free access to school buildings and classrooms.

Investigative Findings

The Board Policy for the district establishes, at 2325 IV, that "school district administrators shall have the absolute right and authority to determine the time, place, and manner in which any person is allowed to visit, volunteer in, or attend any school-sponsored meeting or event or otherwise enter any school district building."

The student handbook for the student's school for the 2021-22 school also references parent visitation as follows:

VISITING THE SCHOOL TO OBSERVE YOUR CHILD OR ATTEND A FUNCTION

1. When visiting State Street Elementary, the following procedures must be followed to ensure school safety:
    - Please check–in through the office.
    - All visitors must have on a visitor's badge.
    - If observing, please do so quietly focusing only on your child's behavior.
    - If you have problems concerning your child, ask the teacher to arrange a conference at another day/time. The child should not be present when discussing his/her progress unless the teacher and the parents believe their presence would help the child.
    - Children not attending State Street are not allowed to visit unless accompanied by an adult.
    - If a parent/guardian has a concern or is upset with the school, he/she will be asked to discuss matters with the principal in her office.

In an email to district staff and outside agencies dated May 4, 2022, the parent stated that she had gone to the school that day "just to check on the children, which [she had] done numerous times without any issue." The parent reported that after she had checked on her daughter (who attends the same school as the student), the building principal approached her in the hallway and began walking with her, stating that he thought it best if he escorted her "to ensure the safety of [the parent] and everyone else." The parent wrote that she went to the student's classroom where she "was unable

to locate the 'no candy' rule in the classroom." After telling the student that she loved him, she left the classroom.

As she was exiting the building, the parent observed another parent who "was able to move freely around the school."

On May 5, 2022, the parent sent an email to the General Director of Early Childhood and Elementary Education for the district and to other district staff. In that email, the parent stated that it had been her intent to visit the school "everyday [sic] for the rest of the school year," but she had decided not to follow through on that plan because she was "completely uncomfortable."

Additional email correspondence between the district and the parent indicates that the parent was provided with the Board Policy and determined that she was being considered an "unauthorized visitor" who was required to "have permission to be on school property for any reason including events." The parent wrote in an email dated May 22, 2022 that she hoped she would be "granted permission to attend [her daughter's] promotion." The building principal responded by email to the parent, stating "I would love for you to attend."

No evidence was provided to show that the parent was prohibited from attending any school event. While the parent did not visit the school on a daily basis during the month of May 2022, she did participate in the scheduled meetings related to the special education evaluation of the student and to the determination of his eligibility to receive special education services. The parent also participated in the IEP team meeting for the student.

Summary and Conclusions

There is no prohibition in special education statutes and regulations against the establishment of district policies regarding school visits by parents. Complaint investigators have no authority to investigate such policies unless they impede the parent's ability to participate in decision-making regarding the special education evaluation or placement of the child or regarding the provision of special education services to an eligible student.

While asserting that restrictions put in place by the school made her very uncomfortable and targeted, the parent does not assert that the school's policy impacted her

participation in any special education action on the part of the district. 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 #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) By no later than August 15, 2022, the district shall schedule an IEP team meeting for the student to review the student's behavior plan. At that meeting, the team shall identify a) the specific circumstances that will trigger a call to the parent to report on the student's behavior, and b) who the "assigned person" or persons will be to make that call. The student's IEP will be revised to include these elements, and the parent will be provided with prior written notice of the changes to the student's IEP.
3) Within 5 school days of the IEP meeting described above under Corrective Action 2, copies of the revised behavior plan and the prior written notice document will be provided to SETS.
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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 501,

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on July 11, 2022, by _____ _____, on behalf of her son, _____ _____. In the remainder of this decision, Ms. _____ will be referred to as "the parent," 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 parent's allegation, was issued on August 9, 2022. That Complaint Report concluded that there were violations of special education statutes and regulations

Thereafter, 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 parent, the Complaint Report, and the district's notice of appeal. The parent did not provide a response to the 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.

K.A.R. 91-40-51(f) also states that any appeal of a complaint report "shall be filed within 10 days from the date of the report." This is an important timeline because it provides the Special Education and Title Services (SETS) team with time to notify the other party and give that party a short time in which to respond to the appeal. The district's original

notice of appeal met that timeline. Subsequently, on August 25, 2022, the district submitted an e-mail statement to support its appeal. Because this subsequent statement did not meet the 10-day timeline and because K.A.R. 91-40-5(f) requires the appeal that does meet the timeline to include "a detailed statement of the basis for alleging that the report is incorrect," the Committee did not consider the statement submitted by the district on August 25, 2022.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

DISCUSSION OF ISSUES ON APPEAL

The district does not appeal any of the conclusions of the investigator regarding violations of law. Rather, the district's lone appeal is that the report is in error in those areas of the report that include the following statement: "The District did not provide a written response to this issue."

In its appeal, the district argues that this statement is incorrect because the district did provide a written response to all three issues. The district's appeal states: "The investigation report should reflect the numerous follow-up questions, responses and the over 100 pages of records provided to the investigator…"

The Committee contacted the investigator about this appeal. The investigator indicated in that discussion (as well as in her e-mail response to Ms. Whiteman on August 11, 2022) that the district did send documents to her. She also stated that she had received responses to questions she had asked and had received documentary evidence. When she stated in the report that the district did not provide a written response she meant that she had also asked the district to submit a written statement of the district's position on each issue, and she did not receive that separate written position statement.

The investigator also stated that she did not oppose the district' proposal to delete the language in the report saying: "The district did not provide a written response to this issue."

CONCLUSION

The Appeal Committee finds that the words in the complaint report stating: "The District did not provide a written response to this issue" are inaccurate. The Appeal Committee finds that the district did cooperate with the investigator by answering questions in writing and by providing relevant documents. Therefore, the Appeal Committee concludes that the language objected to by the district should be removed from the report, and, by this order, the Appeal Committee removes the words "The district did not provide a written response to this issue," wherever they appear in the original report, specifically on pages 4, 8, and 10. All other portions of the original report are sustained.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 1st day of September, 2022.

APPEAL COMMITTEE:

Mark Ward

Brian Dempsey

Ashley Niedzwiecki

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290
ON JULY 18, 2022

DATE OF REPORT: AUGUST 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." ---------- 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 August 16, 2022. On August 1, 2022, the investigator spoke by telephone with Mr. Joe Vitt, Assistant Superintendent/Director of Special Education for the district.

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

- Educational Evaluation dated July 21, 2021
- Academic Language-Reading Evaluation dated August 27, 2021
- Section 504/ADA Student Services Plan dated September 27, 2021
- OT (Occupational Therapy) Outpatient Evaluation dated September 30, 2021
- Email dated November 29, 2021 from the Occupational Therapist (OT) to the student's classroom teacher
- Email exchange dated December 1, 2021 between the assistant director of special education and the parent
- Email dated December 2, 2021 from the parent to the assistant director of special education
- Email dated December 3, 2021 from the parent to the assistant director of special education
- Email dated December 3, 2021 from the assistant director of special education to IEP team members from the district
- Agenda for December 6, 2021 meeting

- Audio recording of the December 16, 2021 IEP team meeting
- 2-Part Zoom recording of the December 16, 2021 IEP team meeting
- Staffing Record dated December 16, 2021
- IEP for the student dated December 16, 2021
- Email dated January 4, 2022 from the special education teacher to the parent.
- Email dated January 7, 2022 from the parent to the special education teacher

Background Information

This investigation involves an eleven-year-old boy who will be enrolled in the fifth grade in his neighborhood school for the 2022-23 school year. 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 two issues.

Issue One: Decisions regarding the development of the student's IEP were predetermined by the district without the meaningful participation of the parents.

Applicable Statutes and Regulations

The required members of an IEP team are specifically identified and described in state and federal statutes and regulations (K.S.A. 72-3404). Members of the team must include

- the parents;
- a classroom teacher of the child;
- at least one special education teacher or special education service provider;
- a school representative;
- a person who can interpret the educational implications of evaluation results; and
- others with special knowledge or expertise regarding the child.

The right of parents to participate in developing their child's IEP is a cornerstone of IDEA (Individuals with Disabilities Education Act). (See 34 C.F.R. 300.501(b); 34 C.F.R. 300.321(a)(1); and 34 C.F.R. 300.503(a).). For that reason, it is critical for school-based

IEP team members to discuss and genuinely consider the parent's input at IEP meetings. School team members cannot truly do that if they decide what they are going to put in the IEP before the meeting begins. This is known as "predetermination."

Special education statutes and regulations state that decisions regarding the provision of special education and related services to a student are to be made by an IEP team. However, the law does permit 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).

Districts are allowed to develop a draft IEP before any IEP meeting. However, in order to ensure parent participation in the development of the IEP, the IEP may not be completed before the IEP team meeting. If school personnel bring drafts of some or all of the IEP content to the IEP meeting, there must be a full discussion with the IEP team, including the parents, before the child's IEP is finalized, regarding content, and the child's needs and the services to be provided to meet those needs. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting for discussion (Federal Register, August 14, 2006, p. 46678).

School team members are not required to agree with the parent or to change the IEP merely because the parent desires a change. Meaningful participation means that the team must listen to and consider parental input and, if appropriate, revise the IEP based on that information.

Parent's Position

It is the position of the parent that the Occupational Therapist (OT) and the classroom teacher conducted an "emailed IEP meeting" in which the parent did not participate and made decisions regarding classroom accommodations to be included in the student's IEP without considering the parent's perspective.

District's Position

It is the position of the district that staff have the obligation and responsibility to meet, discuss and/or prepare for all meetings in which a proposal or response to a parent's request will be discussed. The district asserts that the email from the OT was not evidence of a final judgment on IEP contents. On the contrary, the OT engaged in the authorized activity of soliciting input from the classroom teacher in the development of a proposal to be discussed at an upcoming meeting. Typically, accommodations for handwriting are utilized in the classroom setting. In this case, the classroom teacher would have valuable insights into the appropriateness of the recommendations from the IEE. The OT asked the classroom teacher which of the suggested accommodations would be appropriate for the student. The OT was not telling the teacher that she should not consider any of the suggested accommodations.

In the opinion of the district, the meeting minutes, audio recording, and the resulting IEP changes from/during the December 16, 2021 meeting clearly show that parents were able to participate meaningfully in the IEP process.

Investigative Findings

An Independent Educational Evaluation (IEE) of the student was paid for by the district. That IEE included an Academic Language – Reading Evaluation which was conducted by a Speech/Language Pathologist at a hospital/clinic setting in Overland Park, Kansas. A copy of the report of this evaluation was received by the district via email on October 14, 2021. The clinicians administered a number of tests to the student which were summarized in the report. The clinicians recommended "further evaluation of handwriting skills" and listed a number of "possible accommodations to consider." According to the report, the list of accommodations was not "all inclusive and should be used as a guide; not all are appropriate for each student at any one point in time."

Among the list of accommodations was a section related to handwriting. As stated in the report, the "use of handwriting accommodations and evaluation of handwriting by school occupational therapist is recommended (list of possible accommodations below).

- Consult with school occupational therapist, i.e. for help with pencil grip, posture and paper position. Rule out fine-motor problems in addition to handwriting problems.
- Give the student writing tools that are easier to use, i.e. a padded pencil, or easy flow ink.
- Use wide lined paper with dark lines for the baseline of the letters.
- Teach writing along with spelling and reading.
- Allow the student to use print or cursive, whichever is more legible.
- Allow the student more time for writing activities. (Do not have the student miss breaks/recess.)
- Do not have the student copy from the board.
- Give the student copies of teacher notes.
- Provide an assistant to help the student with longer writing activities. The assistant will be the 'scribe.' The student can dictate and the scribe can write.
- In test situations, the student should be allowed to respond verbally or with a writer/scribe or record answers into a hand-held voice recorder.
- Do not grade the student on neatness or spelling unless the subject is spelling.
- Allow abbreviations.
- Allow the use of a spell checker at the desk.
- Change the type of tests that the student must take. (example: change from essay questions to multiple choice.)
- Give the student worksheets with the math problems already on it.
- Teach and allow keyboarding or voice dictation instead of writing. Due to difficulty with writing, a laptop computer may be an essential tool for now and into the future.
- Reduce the amount of written homework.
- The student should not be required to write his answers due to difficulty efficiently expressing in the written mode.
- At home writing assignments should be completed on a computer.
- Possible Writing programs: Wilson cursive (Wilsonlanguage.com). Powerful Printing and Powerful Cursive (Write on Handwriting, epsbooks.com). Get Ready to Write (epsbooks.com). Handwriting Without Tears. www.hwtears.com"

On November 29, 2021, in preparing for the development of a draft IEP to be sent to the parent for review prior to an upcoming IEP team meeting, the OT for the school sent an email to the student's classroom teacher soliciting the teacher's input regarding the handwriting accommodations that had been included in the IEE report from the speech/language pathologist. In her email, the OT wrote the following:

> "Of these recommended accommodations for [the student] for handwriting from the independent evaluation report, can you please highlight what is applicable to add as accommodations to the IEP please. I do not know [the student] so I think you would have the best knowledge! Thanks!"

The OT included in her message all but two of the "possible accommodations" listed in the IEE report, omitting the suggestions for handwriting programs and at-home writing assignments. The OT also added notes to two accommodations:

- "Give the student copies of teacher notes (NOTE: guided notes, fill in the blank);" and
- Provide an assistant to help the student with longer writing activities. The assistant will be the 'scribe.' (NOTE: speech-to-text)."

The district sent a draft of a proposed IEP for the student to the parent on December 7, 2021. The draft document included seven accommodations/modifications/ supplementary aids and supports.

A meeting to discuss the draft and to develop the initial IEP for the student was held on December 16, 2021. Participants in the meeting included the student's mother and father, the assistant director of special education, the student's classroom teacher, the special education teacher, the occupational therapist, the school psychologist, the social worker, the attorney for the district, and a parent advocate.

As seen in a Google Meets recording of the December 16, 2021 meeting, the IEP team reviewed the draft IEP. The parent noted that she has "reviewed" the draft and provided input regarding changes. The team discussed the parent's requests for changes, added items, changed the location for the provision of accommodations and modifications, and expanding and clarified various components of the section.

The active participation of the parent and the parent advocate is also reflected in the Staffing Record of the meeting. The meeting notes show that changes were made to the draft IEP based on the parents' requests and inputs, and that changes were made to accommodations with regard to preferential seating and to the location for the provision of all accommodations. Accommodations in the draft were amended to include 'guided notes" and "extended time."

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 also sent home to the parent in the student's backpack. That version of the IEP contained a total of nine accommodations/modifications/supplementary aides and supports (two more than were included in the draft IEP).

The parent reviewed the IEP and on January 3, 2022 sent an email to the special education teacher which included additional requested changes to the IEP. None of those changes related to accommodations/modifications/supplementary aids and services.

The district revised the IEP and sent the revised IEP to the parent on January 4, 2022. On January 7, 2022, the parent sent the special education teacher an email proposing additional changes to the IEP.

The student's initial IEP was finalized, and, after a brief delay resulting from a Covid-19 exposure on the part of the student, special education services were initiated on January 13, 2022. The "Accommodations/Modifications/Supplementary Aids and Supports" section of the student's finalized initial IEP included the following:

1. Separate setting for tests;
2. Speech to text/Text to speech;
3. Graphic organizers, which could include fill-in-the-blank, guided notes;
4. Explicit and repeated directions and instructions;
5. Checks for understanding;
6. Shortened assignments/tasks and extended time;
7. Preferential seating;
8. Ignore behaviors associated with tics/Tourette's (blinking, head rolling, shrugging, grunting) and address any other inappropriate behaviors privately with [the student] through redirection and give praise for positive behaviors; and
9. Prompt for changes in routine/schedule.

Summary and Conclusions

The sending of an email by the OT to the student's classroom teacher in preparation for the development of a draft IEP did not, as the parent asserts in her complaint, constitute an IEP team meeting. As permitted by special education statutes and regulations, the district engaged in preparatory activities in order to develop and share with the parent a draft version of an initial IEP for the student. That draft was sent to the parent well ahead of a properly constituted IEP team meeting on December 16, 2021. That meeting was attended by both parents and a parent advocate, all of whom were – as shown in a video recording of the meeting – actively engaged in the discussion regarding the development of the IEP. The parent acknowledged that she had reviewed the draft document. Both the parent and the parent advocate suggested changes to many portions of the draft, including to the accommodations/ modifications section which was the focus of the email from the OT to the classroom teacher.

The video recording of the IEP team meeting of December 16, 2021 provided ample evidence that school team members actively sought the parent's input in the discussion of a draft IEP document and incorporated many of the parent's requests into the IEP. That revised document was then sent to the parent who requested additional changes to the IEP on January 4, 2022. Those changes were made, and a revised version of the IEP was sent to the parent. Additional changes were made by the district after the parent requested more revisions to the IEP on January 9, 2022.

The sending of an email by the OT to the classroom teacher was not an IEP team meeting. There is no evidence to support the parent's contention of predetermination regarding the development of the student's initial IEP. A violation of special education statutes and regulations is ***not*** substantiated on this issue.

Issue Two: The district discussed the student's eligibility for special education services and made decisions regarding special education services for the student outside of the IEP team and thereby deprived the parents of meaningful participation in the decision-making process.

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.

As noted above under Issue One, however, 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.

Parent's Position

The parent asserts that an email sent by the assistant director of special education to district members of the student's evaluation/eligibility/IEP team provides corroboration of the parent's assertion in Issue One that decisions regarding special education services for the student were made outside of the IEP team process.

District's Position

As in Issue One above, it is the position of the district that special education statutes and regulations allow preparatory activities regarding issues that will be discussed in a later meeting (such as sending an email to staff regarding the agenda and location for an upcoming meeting). The district asserts that the audio recording of the December 6, 2021 team meeting clearly show that there had been no predetermination regarding the student's eligibility to receive special education services and that the parent actively and meaningfully participated in that meeting.

Investigative Findings

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 attached 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 notice of a December 6, 2021 meeting which stated that the meeting would be held for the purpose of developing an IEP for the student and also to "review the evaluation and determine eligibility."

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.

On December 2, 2021, the parent sent an email to the assistant director of special education objecting to revisiting a discussion of the student's eligibility for special education services, stating

> Any further consideration of [the student's] eligibility is unwarranted, would cause unnecessary delay, and is highly prejudicial to his right to FAPE.

> I am concerned that the assertion that [the student's] eligibility was not determined by the Team is the product of a discussion outside of the Team with other personnel who did not participate in the meeting and did not have the benefit of reviewing the transcript. On the advice of my counsel, I demand that the LEA cease and desist from any further discussion outside of an IEP Meeting, as such discussion spawns suspicion, causes confusion and leads to further delays in [the student] obtaining FAPE.

On December 3, 2021, the assistant director also sent the school-based members of the student's IEP team an email stating

> I wanted to make each of you aware that we are changing the location of Monday mornings meeting to the Board of Education office. With attorneys joining us and having more team members than last time, we need a larger space.
>
> I also wanted you to know that we will likely begin the meeting with reviewing our last discussion, but probably not dwelling there or reconsidering our initial decision. We will likely move forward with picking up where we left off in the social emotional section and considering his present levels to complete the eligibility report. Please let me know if you have questions.

At the December 6, 2021 meeting, no change was made to the team's decision in November 2021 regarding the student's eligibility for special education under the category of Specific Learning Disability.

Summary and Conclusions

A December 3, 2021 email from the assistant director of special education to school-based team members addressed two topics: the location of an upcoming meeting scheduled for December 6, 2021 and the agenda for that meeting. Both topics had been the subject of separate emails between the parent and the assistant director. Nothing in the email directs any decisions on the part of staff regarding special education services for the student. Rather, the message briefly summarizes the anticipated agenda which the assistant director sent to the parent on December 1, 2021. The email references what will be discussed; it does not direct team members to make any specific decisions on those topics.

As was established above under Issue One, districts are allowed to engage in planning and preparatory discussions prior to team meetings. 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
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 JULY 19, 2022

DATE OF REPORT AUGUST 26, 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 #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 and USD #259 received the complaint on July 19, 2022. The 30-day timeline to investigate this complaint was extended for seven days until August 26, 2022 in order to facilitate the use of an interpreter because the parent's native language is Spanish.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, used a KSDE contracted interpreter to interview the parent by telephone on July 27, 2022. The parent was contacted on August 1, August 10, August 17, and August 18, 2022 via translated email offering the opportunity to schedule an additional interview and to provide additional documentation. However, the parent reported she was unavailable for another interview within the investigation timeline and did not provide any additional documentation.

Amy Godsey, Mediation/Due Process Supervisor for USD #259, was interviewed by telephone on August 15, 2022.

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:

- Notification of IEP Meeting dated January 15, 2021
- Individualized Education Program (IEP) dated January 25, 2021
- 2021-22 School Year Calendar for USD #259
- IEP Amendment dated August 30, 2021 to the January 25, 2021 IEP
- Assistive Technology Consultation Request Form dated September 1, 2021
- Notification of IEP Meeting dated December 16, 2021
- Notification of IEP Meeting dated December 16, 2021translated into Spanish
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated January 7, 2022
- IEP dated January 11, 2022
- PWN for Material Change in Services dated January 11, 2022
- PWN for Material Change in Services dated January 11, 2022 translated into Spanish and provided to and signed by the parent on that same date
- IEP dated January 11, 2022 translated into Spanish and provided to parent on May 13, 2022
- Calendar Invitation for Sarahadid Matos, Interpreter, to the May 18, 2022 IEP meeting
- PWN refusing parent request for 1:1 personal paraprofessional on May 18, 2022
- PWN refusing parent request for 1:1 personal paraprofessional on May 18, 2022 translated into Spanish and mailed to the parent on May 25, 2022
- School Records Request from USD #265 dated May 25, 2022
- Parent Contact Log for May 2022
- School Nurse Contact Summary Log for the 2021-22 School Year
- IEP Goal Progress Reports for the 2021-22 School Year
- Formal Complaint written by the parent on July 19, 2022
- Email dated August 1, 2022 written by Amy Godsey, Mediation/Due Process Supervisor for USD #259, to the parent

- Email dated August 1, 2022 written by Ms. Godsey to the parent translated into Spanish
- PWN dated January 7, 2022 translated into Spanish and provided to the parent on August 1, 2022
- Written Statement written by Jamie Mude, Speech/Language Pathologist at USD #259, dated August 2, 2022
- Written Response to Allegations written by Trisha Stevenson, IEP Case Manager for the student, dated August 4, 2022
- USD #259 Proposed Resolution of 23FC259-001 written by Ms. Godsey, dated August 5, 2022
- Email dated August 8, 2022 at 10:54 a.m. written by the mother to the complaint investigator
- USD #259 Response to the Allegations written by Ms. Godsey, dated August 9, 2022
- PowerPoint slide titled Procedural Safeguards – Due Process Updates presented at the August 9, 2022 Beginning of Year Professional Development for all USD #259 Special Education Staff Meeting
- Email dated August 10, 2022 at 7:30 a.m. written by the complaint investigator to the mother
- Email dated August 15, 2022 at 3:34 p.m. written by Ms. Godsey to the complaint investigator
- Email dated August 16, 2022 at 10:59 a.m. written by the mother to the complaint investigator
- Email dated August 17, 2022 at 7:50 a.m. written by the complaint investigator to the mother
- Email dated August 17, 2022 at 7:55 written by the mother to the complaint investigator
- Email dated August 17, 2022 at 8:46 a.m. written by the complaint investigator to the mother
- Email dated August 17, 2022 at 9:16 a.m. written by the mother to the complaint investigator
- Email dated August 17, 2022 at 1:10 p.m. written by the complaint investigator to the parent

- Email dated August 18, 2022 at 6:56 a.m. written by the mother to the complaint investigator
- Email dated August 18, 2022 at 8:39 a.m. written by the complaint investigator to the mother
- Email dated August 19, 2022 at 8:38 a.m. written by the mother to the complaint investigator
- Email dated August 18, 2022 at 12:36 p.m. written by the complaint investigator to the mother
- Email dated August 22, 2022 at 9:11 a.m. written by Ms. Godsey to the complaint investigator
- Kansas Department of Education Teaching License for Haley Holland with expiration date of April 26, 2025 as an Early Childhood Unified Teacher
- Kansas Department of Education Teaching License for Trisha Stevenson with expiration date of September 18, 2023 as Early Childhood Unified Teacher
- Kansas Department of Education Teaching License for Beth Bach with expiration date of June 30, 2023 as an Emergency Substitute Teacher
- Kansas Department of Education Teaching License for Kimberly Knafla with an expiration date of March 18, 2026 as a Functional Skills Teacher
- Kansas Department of Education Parent Rights in Special Education (Procedural Safeguards) dated February 2020 translated into Spanish

Background Information

This investigation involves a seven-year-old female student with a medical diagnosis of Down Syndrome who was enrolled in USD #259 for the past two school years. She lives at home with her parents whose native language is Spanish. The student was most recently evaluated on January 24, 2021 and determined to be eligible for special education and related services under the disability category of Developmental Delay. During the 2021-22 school year, she attended first grade at McCollom Elementary School where she received special education and related services in a functional skills mixed abilities special education classroom with four additional students, one special education teacher, and four paraprofessionals.

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 five 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 IEP, specifically by not keeping the student inside from recess on days the wind chill temperature was below 50 degrees during the 2021-22 school year.

Positions of the Parties

The parent believes USD #259 has not implemented the student's IEP in regards to the accommodation for the student to remain inside for recess when the wind chill is below 50 degrees Fahrenheit. The parent stated,

> Due to her medical condition, she is to remain inside when the wind chill temperature is below 50 degrees Fahrenheit. This is a requirement on her IEP that has not been followed. I had to be constantly vigilant of the weather and make teachers and school aware and remind them of the IEP weather restriction. I needed to send messages and emails to school staff on a daily basis to remind them of the IEP restriction. When I did not send messages, the school would take the student out to the playground despite the weather as evidenced by the playground rocks in her shoes and the student's difficulty breathing at night.

USD #259 acknowledged that the parent often communicated with school staff regarding the weather and the physician recommendation that the student remain inside for recess when the wind chill fell below 50 degrees Fahrenheit. However, the district reported that the student's IEP was implemented regardless of the parent

communication concerning the weather restriction as evidenced by recess procedures for the student's supervision on days the wind chill fell below 50 degrees Fahrenheit.

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 had two IEPs in effect during the 2021-22 school year. The first IEP was developed on January 25, 2021 with both the parent and a Spanish-language interpreter in attendance. This IEP includes two accommodations related to the weather. First, the student shall remain inside for recess when the temperature is colder than 40 degrees outside because the student gets ill easily and she has a doctor's note that states in order to keep her healthy, she needs to stay inside when the temperature is below 40 degrees Fahrenheit. The second accommodation requires the student to wear a hat outside at recess when the wind chill temperature falls below 50 degrees Fahrenheit. These IEP accommodations were in effect between August 12, 2021 and January 11, 2022.

The second IEP was developed on January 11, 2022 with both the parent and a Spanish-language interpreter in attendance. This IEP includes one accommodation related to the weather which states that the student shall remain inside for recess when the wind chill temperature falls below 50 degrees Fahrenheit because the student gets ill easily and she has a doctor's note that states in order to keep her healthy, she needs to stay inside when the wind chill temperature is below 50 degrees Fahrenheit. This IEP accommodation was in effect for the remainder of the 2021-22 school year which ended on May 25, 2022.

Trisha Stevenson, the student's special education classroom teacher for the 2021-22 school year reported that the following procedure was in place in regards to outside recess and provided photographs of picture communication boards:

1) The teacher and/or paras checked weather app prior to recess to ensure the wind chill was at or above the target temperature prior to each recess.

2) If the wind chill temperature was below the target temperature, the student was notified she could not go outside and was shown a visual (picture card of recess with a no overlay).
3) The student was frequently given a choice of which teacher/para stayed with her for support when she stayed inside from recess.
4) The student did one of the following activities when she stayed inside from recess: a) the sensory room, b) wagon ride around the school to greet people in the hallway with her assistive technology device, c) played in a buddy room (Mrs. Kimberly Knafla) and worked on greetings and asking peers to play.

Ms. Stevenson reported the following procedure was in place when the district could not provide 1:1 support for indoor recess times due to a staff shortage:

1) The teacher or paras would check with the buddy room, another functional skills classroom at McCollum Elementary School taught by Kimberly Knafla, and ask if they could supervise the student during indoor play.
2) Ms. Knafla and her paras would supervise the student for the duration of recess and we would stop by her classroom after recess was over to have the student rejoin our class.

Mrs. Stevenson reported the following plans were in place to support the student's social and emotional well-being for these procedures:

1) Provided a warning and visual supports to notify the student of Indoor or outdoor recess.
2) Offered choices whenever possible.
3) Took the student to another classroom to engage with peers during recess.
4) Targeted gaining attention and asking peers to play.
5) Encouraged movement during indoor play times.

USD #259 acknowledged that the parent often communicated about the weather conditions with school staff; however, the recess procedures were in place to ensure

compliance with the IEP. In addition, Ms. Stevenson reported that staff ensured the student wore a winter hat to and from the bus.

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 parent did not provide any specific dates that the student went to outside recess when the wind chill factor was below 50 degrees Fahrenheit which would have triggered a weather related accommodation in one of the two IEPs in effect during the 2021-22 school year. Interviews and documentation provided by the district document that detailed procedures had been created by Ms. Stevenson to monitor the temperature at the time of any outdoor recess and to implement a plan for providing any triggered weather related accommodation.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to comply with federal regulations at 34 C.F.R. 300. 300.323(c)(2) and state regulations 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 as soon as possible following the development of the IEP 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 implement the student's IEP, specifically by the school nurse failing to contact the parent when incidents or accidents would happen to the student during the 2021-22 school year.

Positions of the Parties

The parent reported that the school nurse at McCollom Elementary School in USD #259 failed to notify her when accidents happened at school as required by the student's IEP. The mother stated, "The student had many incidents and accidents throughout the 2021-22 school year." She reported a history of the student coming home with bruises on her back and right wrist as well as blows to the head and forehead. The mother also stated, "They always said she hadn't cried at all and I noticed red eyes". The mother also reported that the student came home with her pants ripped in the crotch area and that she was very concerned when the student subsequently began to touch her private areas at home.

The mother stated that the only call she received during the 2021-22 school year occurred on May 2, 2022 when she received a phone call from the school nurse laughing and informing her that the student had fallen and hit her head.

USD #259 denied the parent's allegation that the school nurse did not contact the parent during the 2021-22 school year and provided a School Nurse Contact Summary Log dated between August 16, 2021 and May 26, 2022. The log verifies a phone call to the parent on May 2, 2022 when the student was in the physical education class and a peer accidentally ran into her causing her to fall and hit the back of her head twice on the floor. In addition, the log summarizes phone calls and personal interactions made between the school nurse and the parent on August 16, August 30, September 14, September 21, October 1, October 22, and December 7, 2021 as well as on January 8 and April 19, 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 #259.

The findings of Issue One are incorporated herein by reference.

Neither the January 25, 2021 IEP nor the January 11, 2021 IEP includes any requirement for the school nurse to contact the parent.

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, there is nothing in the January 25, 2021 IEP or the January 11, 2022 IEP that requires the school nurse to be in contact with the parent. Since communication with the nurse is not a service specified in this student's IEP, any communication between the parent and the school nurse would fall under local school board policy, procedures and practices. As such, I have no jurisdiction to investigate or make findings on matters that are not related to allegations of noncompliance with the IDEA.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to comply with federal regulations at 34 C.F.R. 300. 300.323(c)(2) and state regulations 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 as soon as possible following the development of the IEP 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 appropriately respond to the parent's request for paraprofessional support and the use of an augmentative communication device during the past 12 months.

Positions of the Parties

The parent reported USD #259 refused to teach the student how to use an electronic augmentative communication device which was purchased for the student by Rainbows United, Inc. The mother believes the district "is not equipping her with the tools to succeed in school or in the community".

In addition, the parent reported that USD #259 refused to provide a 1:1 personal paraprofessional despite the parent's request based on the student's need for a higher level of supervision in the school setting to keep her safe and included in the least restrictive environment (LRE).

USD #259 reported that school staff referred the student for an assistive technology consultation at the beginning of the 2021-22 school year after the student's mother shared concerns with the delay in obtaining an electronic augmentative communication device from Rainbows United, Inc. School staff reported that a variety of augmentative communication systems including an iPad were used throughout the school day by the student in order to achieve her IEP goals for increasing her expressive communication skills.

USD #259 also indicated the district responded appropriately to the parent's request for 1:1 personal paraprofessional support at the end of the 2021 -22 school year by reconvening the student's IEP team to discuss and consider the parent's request and providing the parent with prior written notice (PWN) following that IEP team meeting.

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 and her family work with Rainbows United Inc. for case management and obtaining resources and services. Rainbows United Inc. is a local agency that provides center based, community based, and home based service options for young children with special needs. Service components added in the past decade include hearing and vision specialty services, respite care for individuals across the life span, case management services, autism waiver services, supported family living, foster care for children with special needs, outpatient therapies, and therapeutic child care. The mother reported that Rainbows United Inc. obtained an electronic communication device, an iPad, for the student during the first semester of the 2021-22 school year.

Jamie Mude, the speech/language pathologist at USD #259, reported that in August 2021 the student's mother shared that Rainbows United, Inc. was in the process of obtaining an iPad for the student but the process was at a standstill due to the case

manager's maternity leave. Ms. Mude offered to assist the parent in obtaining funding for a dedicated communication device through the student's Medicaid plan and the mother agreed.

On September 1, 2021, an Assistive Technology Consult Request Form was completed on behalf of the student by Ms. Mude. The form indicated that the student currently uses simple signs, a Picture Exchange Communication System (PECS) book and a core-fringe communication book to communicate her thoughts and ideas.

Ms. Mude reported that an iPad was purchased for the student through Medicaid; however, the parent chose to not send that iPad to school with the student; therefore, another iPad device was obtained and used in the classroom setting to be consistent with the device used in the home.

Both the January 25, 2021 IEP and the January 11, 2022 IEP document that the student requires assistive technology. The January 11, 2022 IEP states:

> The student has very limited verbal communication. The student has an iPad with a communication app on it that was obtained through Rainbows. At this point the device remains at home. She has a paper point and carry communication book at school with the same vocabulary on it as her communication app. Both communication systems are used to model aided language input by adults in her environment. Her communication book should be available to her throughout her school day.

The IEP goal progress reports for third and fourth quarters of the 2021 -22 school year reflect that the student making progress toward her communication goal to use five new core words in order to communicate, using her picture based communication system and/or words, when given a leading question and visual supports by an adult. The student is now able to use the core words "help", "stop", and "go".

Both Ms. Mude and Ms. Stevenson reported the student regularly used the iPad and her communication book in embedded communication opportunities throughout the school day to support the student using augmentative communication in the school setting during the 2021-22 school year.

Ms. Stevenson stated:

> On 4/28, the mother emailed me with some questions and also requested that a higher level of supervision be written into the IEP. I sent her a follow up email and asked for clarification. On 4/29, the mother emailed to clarify that she wants "a higher level of supervision, that at all times and in all places the student is accompanied and supervised by a teacher". I sent a follow up email on 5/2 to answer the questions posed and also let the mother know that "the student has a staff member from my classroom with her at all times during the school day. She is fully supervised. There are no times when the student is left unsupervised." On 5/2, I contacted my Principal and Special Education Campus support to help set up a meeting with the mother to discuss her concerns.

The Parent Contact Log for May 2022 documents that attempts were made to contact the parent on May 4, May 6, May 9 and May 10, 2022 and voicemail messages were left each time to try and set up an IEP team meeting date. The log states that the parent was contacted by telephone on May 11, 2022 and that the IEP meeting was scheduled for May 18, 2022. The log documents that the parent sent an email on May 17, 2022 confirming the IEP meeting and informing the district of her intent to invite the case manager and coordinator from Rainbows United, Inc. to the meeting on May 18, 2022.

Interviews and documentation confirm that an IEP team meeting was held on May 18, 2022 with the parent and a Spanish-language interpreter in attendance. The May 2022 contact log shows the parent contacted the district on May 19, 2022 to inform school staff of their decision not to have the student return to USD #259.

On May 25, 2022, USD #259 provided the parent with a PWN translated into Spanish refusing the parent's request for a 1:1 personal paraprofessional stating:

> On May 18, 2022, parents requested that the student receive the special education related service of 1:1 attendant care support for the duration of each school day due to the concern parents had of the student not being monitored closely enough during the school day. The school-based members of the IEP team refuse this request as the student is in a Mixed Abilities classroom where the students in the classroom are supported by 5 adults both in and out of the classroom and the behavior intervention plan, as part of student's IEP, is being followed with fidelity. The addition of

the related service of 1:1 attendant care for additional support for the student is not warranted and would result in an unnecessary change to the level of restrictiveness in how the student is provided special education services.

USD #265 sent the district a request for the release of school records signed by the parent on May 25, 2022.

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, there is no documentation to support that the parent made a request for an IEP team meeting to discuss the use of assistive technology during the 2021-22 school year. Both IEPs in effect during the school year already included a statement that the student requires assistive technology as well as communication goals which required the use of augmentative communication systems in order to achieve those goals.

Instead, the documentation shows USD #259 staff assisted the parent in obtaining an iPad through the student's Medicaid. Documentation and interviews found the student was exposed to a variety of picture-based communication systems and had opportunities to use the assistive technology on a regular basis throughout the school day.

However, there is evidence to support that the parent requested an IEP team meeting on May 2, 2022 to discuss their request to add the support of a 1:1 personal paraprofessional to the student's IEP. Documentation shows USD #259 contacted the parent on May 4, May 6, May 9 and May 10, 2022 and left voicemail messages in an attempt to schedule an IEP team meeting. The parent was contacted by phone on May 11, 2022 and an IEP team meeting was scheduled for May 18, 2022. The first contact with the parent to attempt to schedule the meetings was just two school days from the

date of her initial request to reconvene the IEP team and the IEP team meeting was held a total of 14 school days from the parent's request thus documenting that USD #259 was responding to the parent request in a reasonable amount of time.

The evidence presented supports the finding that USD #259 has appropriately responded to the May 2, 2022 parent request for an IEP team meeting to discuss adding a 1:1 personal paraprofessional. Based on the foregoing, a violation of special education statutes and regulations is not substantiated.

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 regulation implementing the IDEA at 34 C.F.R. 300.503(c)(1)(ii) require that school districts provide parents with this prior written notice in the native language of the parent.

In this case, the parent requested an IEP team meeting to discuss their request for a 1:1 personal paraprofessional on May 2, 2022 and USD #259 reconvened the IEP team on May 18, 2022 to discuss the parent request. The district provided the parent with a PWN translated into Spanish refusing the parent request on May 25, 2022. Based on the foregoing, there is evidence to support a finding that USD #259 provided PWN in a timely manner and in the parent's native language.

ISSUE FOUR: The USD #259 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide an appropriately credentialed and trained special education teacher for the student during the 2021-22 school year.

Positions of the Parties

The parent reported that the student was not taught by appropriately certificated teachers during the 2021- 22 school year. The parent stated, "Ms. Stevenson is not capable or trained to work with kids and help kids with special needs".

USD #259 reported that all staff working with the student during the 2021-22 school year were appropriately certificated by the Kansas Department of Education (KSDE).

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 assigned to the functional skills mixed abilities classroom taught by Trisha Stevenson during the 2021-22 school year.

Ms. Stevenson graduated from Wichita State University with a bachelor's degree in psychology and a master's degree in Early Childhood Unified. She holds a teaching license issued by the KSDE with an endorsement for Early Childhood Unified (ECU) for students ages birth to grade 3 which is valid until September 18, 2023.

Ms. Stevenson went on maternity leave from August 23,2021 to November 4, 2021. USD #259 reported that neither a teacher with a KSDE teaching license for a functional skills classroom nor a KSDE substitute teaching license was available for hire during that timeframe so the district hired Beth Bach as the long-term substitute teacher in the student's classroom. Ms. Bach holds a teaching license issued by the KSDE with an endorsement for Emergency Substitute for students in grade pre-kindergarten through grade 12 which is valid until June 30, 2023.

USD #259 assigned Haley Holland, another functional skills classroom teacher at McCollom Elementary School who holds a teaching license issued by the KSDE with an ECU endorsement for students ages birth to grade 3 which is valid through April 26, 2025, to supervise and assist Ms. Bach during the period of the maternity leave.

USD #259 also reported that an IEP amendment was made to the January 25, 2021 IEP on August 30, 2022 at the parent's request and agreed upon by Kimberly Knafla, the special education teacher who facilitates the bus transportation for students in the functional skills mixed abilities program. Ms. Knafla holds a teaching license with a functional skills endorsement for students in pre-kindergarten through grade 12 which is valid through March 18, 2026.

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.

State regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-31-34(b)(1) require school districts to employ persons who hold licenses or certificates with specific endorsements for the position held.

The KSDE details personnel qualifications in the 2021-22 Special Education Reimbursement Guide State for Categorical Aid. Per the *KSDE Special Teacher Endorsements for Reimbursement* chart in Appendix B, an endorsement of Early Childhood Unified (ECU) is an approved licensure for a teacher of a functional skills or low incidence classroom.

State regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-31-34(b)(4) allows school districts to employ a person who holds a baccalaureate degree and an emergency substitute certificate issued by the KSDE if an appropriately endorsed teacher or a certificated substitute teacher is not available.

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 student was assigned to a functional skills classroom taught by Trisha Stevenson for the 2021-22 school year. Ms. Stevenson holds a teaching license issued by the KSDE with an Early Childhood Unified (ECU) endorsement valid through September 18, 2023. Ms. Stevenson went on maternity leave from August 23, 2021to

November 4, 2021. During that time frame, Beth Bach, who holds a teaching license issued by the KSDE with an Emergency Substitute endorsement valid through June 30, 2023, was hired to teach the class under the supervision of Haley Holland, another functional skills classroom teacher at McCollom Elementary School who holds a teaching license issued by the KSDE with an ECU endorsement valid through April 26, 2025. On August 30, 2021, the parent made a request for an amendment to change the seating accommodation for the transportation as a related service to Kimberly Knafla, the special education teacher who facilitates transportation for students in the functional skills mixed abilities program. Ms. Knafla, who is a KSDE licensed teacher for a functional skills classroom, acted as the district representative and agreed to the amendment.

Based on the foregoing, USD #259 hired appropriately certificated staff to provide special education and related services in accordance with the KSDE requirements during the 2021-22 school year and is found to be in compliance with federal regulations at 34 C.F.R. 300.156 and state regulations at K.A.R. 91-31-34(b).

> ISSUE FIVE: The USD #259 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide special education documents in the parent's home/native language and to provide an interpreter at meetings held between school staff and the parent during the 2021-22 school year.

Positions of the Parties

The parent reported that USD #259 failed to provide them with a copy of the student's IEP translated into Spanish. The parent stated, "I requested the IEP be provided in my preferred language (Spanish) on 1/11/22. I did not receive the IEP in Spanish until 5/13/22."

The parent also stated:

> The school would not provide an interpreter for communication / interactions with my husband or I [sic] on a regular basis. The school only provided an interpreter a couple of times. The school assumed we were not knowledgeable due to the language barrier. The teacher also assumed that the student did not understand English. The student

understands both English and Spanish. The teacher was not culturally sensitive and did not provide the necessary resources to help the student thrive.

After conducting an internal review of the student's special education file, USD #259 reported that the parent was provided with copies of all documents required to be translated into the parent's native language with one exception. USD #259 acknowledged that a PWN proposing to change the accommodation for transportation as a related service from the use of a car seat to the use of a safety harness on the bus because of the student's height and weight on August 30, 2021 was not provided to the parent in Spanish until August 1, 2022. The district also acknowledged that this PWN was not initially provided to the parent until January 7, 2022 due to an oversight while the special education teacher was out of school due to maternity leave.

Based on this internal finding of noncompliance, USD #259 trained all special education staff in the district on August 9, 2022 through the beginning of the year professional development presentations which highlighted that all PWN must be provided within 15 school-days of any special education related request. In addition, Translation Guide was provided to assist IEP Case Managers in providing the required documents which must be translated into the parent's native language.

The district noted that the December 16, 2021 meeting notification for the annual IEP was translated into Spanish although this was not required by the IDEA.

USD #259 also reported that an interpreter was provided at both of the student's IEP team meetings held during the 2021-22 school year in order to facilitate parent participation.

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 Issues Three and Four are incorporated herein by reference.

During the 2021-22 school year, two IEP team meetings were held for the student. USD #259 provided a written notification of the first IEP team meeting in Spanish on

December 16, 2021 and both documentation and interviews found that the parent attended the IEP team meeting held on January 11, 2022.

The Special Education Contact Log shows the parent verbally requested the second IEP team meeting on May 11, 2022 to discuss concerns with the student's supervision at school. Documentation shows that the parent confirmed via email on May 17, 2022 that the case manager and the coordinator from "Rainbows" would also be in attendance at the IEP meeting.

The first meeting was held on January 11, 2022 as the annual IEP team meeting to review the January 25, 2021 IEP and revise, if necessary. The IEP participation page documents that Sarahadid Matos served as the interpreter for the IEP team meeting. A prior written notice proposing the elimination of physical therapy (PT) services was created and translated into Spanish by Ms. Matos at the IEP team meeting and the parent signed consent for the proposed material change in services at the conclusion of that IEP team meeting.

The second IEP team meeting was held on May 18, 2022 to consider the parent's request for a 1:1 paraprofessional attendant care as a means of providing the student with a higher level of supervision at school. The IEP and an electronic calendar invitation documents that Ms. Matos again served as the interpreter at this IEP team meeting. A prior written notice refusing the parent's request translated into Spanish was mailed on May 25, 2022.

An IEP amendment was made to the January 25, 2021 IEP on August 30, 2022 at the parent's request. USD #259 reported that while Ms. Stevenson was out of the district for maternity leave, the parent spoke to Kimberly Knafla, the special education teacher who facilitates the bus transportation for students in the functional skills mixed abilities program, and they agreed to amend the student's IEP in regards to the seating accommodations for the transportation as a related service. Documentation found that the parent was not provided with a PWN proposing the change of accommodations for transportation as a service until January 7, 2022. This same PWN was not provided to the parent in Spanish until August 1, 2022.

USD #259 provided a copy of the Procedural Safeguards written in Spanish and the IEP dated January 11, 2022 documents that the parent acknowledged receipt of this document.

Applicable Regulations and Conclusions

Federal regulation implementing the IDEA at 34 C.F.R. 300.322(e) require that school districts take whatever action is necessary to ensure that the parent understands the proceedings of an IEP Team meeting, including arranging for an interpreter for parents whose native language is other than English.

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. The KSDE has determined that 15 school-days from the date of any IDEA related proposal or refusal meets the definition of "timely". Federal regulations implementing the IDEA at 34 C.F.R. 300.503(c)(1)(ii) require that school districts provide parents with this prior written notice in the native language of the parent.

Federal regulations implementing the IDEA at 34 C.F.R. 300.504(a) requires school districts to provide parents with a copy of the IDEA Procedural Safeguards at least annually and upon the initial referral or parent request for an evaluation; upon receipt of the first State child complaint; in accordance with the discipline procedures; and upon parent request. Federal regulations implementing the IDEA at 34 C.F.R. 300.504(d) require that school districts provide parents with these IDEA Procedural Safeguards in the native language of the parent.

The Office of Special Education Programs (OSEP) published a Dear Colleague Letter dated June 14, 2016 which explicitly states there is no requirement under the IDEA that IEPs must be translated. The letter indicates the only documents that are required to be translated into the parent's native language are the Procedural Safeguards and all prior written notices proposing or refusing 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

are also provided in the parent's native language. However, the Dear Colleague Letter makes it clear that school districts have independent responsibilities under other federal laws including Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974 to provide parents of children with disabilities whose native language is not English with meaningful access through timely and complete translation and oral interpretation.

Please note that these "Dear Colleague" letters from OSEP are guidance letters. They reflect the opinion of OSEP. They do not have the force of law. Moreover, as stated below, an IDEA complaint investigator does not have jurisdiction to investigate or make findings or conclusions related to Title VI of the Civil Rights Act of 1964 or the Equal Educational Opportunities Act of 1974.

In this case, both documentation and interviews found USD #259 provided the parent with a Spanish translation of the IDEA Procedural Safeguards dated February 2020 at the January 11, 2022 IEP team meeting. In addition, a Spanish interpreter participated in both of the student's IEP team meetings held on January 11, 2022 and May 18, 2022. The parent was provided with a PWN translated into Spanish and the parent signed written consent for the material change of services proposed by the district at the end of the January 11, 2022 IEP team meeting and, on May 25, 2022, USD #259 provided the parent with a PWN translated into Spanish refusing the request for a 1:1 personal care attendant discussed at the May 18, 2022 IEP team meeting.

It is noted that the parent's request for the January 11, 2022 IEP to be translated into Spanish was not fulfilled until May 13, 2022, more than four months following the IEP team meeting. However, the IDEA does not require that the IEP be translated into the parent's native language. The school district may or may not have an independent responsibility to provide the IEP in the parent's native language under other federal laws / regulations but I have no jurisdiction to investigate or make findings for those laws / regulations.

The district acknowledged that it failed to provide the parent with timely PWN for the August 30, 2021 IEP amendment to the January 25, 2021 IEP until January 7, 2022. In addition, the district acknowledged that it failed to provide the parent with the PWN

translated into Spanish until August 1, 2022. Based upon the foregoing, a violation of 34 C.F.R. 300.503(a) and (c) is made for failing to provide the parent with timely PWN as well as failing to provide the PWN in the parent's native language.

However, it is noted that this procedural noncompliance did not impact the provision of FAPE to the student as the parent requested the change in the accommodation for transportation as a related service and the LEA representative, Ms. Kalfa, was in agreement with the parent's request.

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) and (c) is made for failing to provide the parent with timely PWN as well as for failing to provide the PWN in the parent's native language.

   In this case, the USD #259 amended the January 25, 2021 IEP through an agreement between the parent and the LEA representative, Kimberly Kalfa, on August 30, 2021. However, the parent was not provided with a PWN proposing the change to the IEP until January 7, 2022, which is more than the 15-school days the KSDE considers to be "timely". In addition, the parent was not provided with PWN proposing this change in the parent's native language until August 1, 2022.

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 at 34 C.F.R. 300.503(a) and (c) to provide parents with timely PWN in the parent's native language.

2. It is noted that USD #259 has already provided professional development to all special education regarding the identified noncompliance. For this reason no further systemic corrective action is ordered.

3. The identified procedural noncompliance did not impact the provision of FAPE to the student as the parent requested the change in the accommodation for transportation as a related service and the LEA representative, Ms. Kalfa, was in agreement with the parent's request. It is also noted that the student is no longer enrolled in USD #259. For these reasons, no individual corrective action is ordered.

4. 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 #367
ON AUGUST 24, 2022

DATE OF REPORT SEPTEMBER 27, 2022

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

The complaint is against USD #367 (Osawatomie Public Schools) and the East Central Kansas Special Education Cooperative (ECKSEC). In the remainder of the report, " the "school," the "district," the "local education agency (LEA) and the "coop"" shall refer to USD #367.

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 August 24, 2022 and the 30-day timeline ends on September 27, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, first contacted the mother on August 24, 2022 and later interviewed the mother by telephone on August 29, 2022.

Dr. Vicki Vossler, Director of Special Education, USD #367 was first contacted on August 29, 2022 and Ms. Margaret Meyers was interviewed on September 14, 2022.

The Complaint Investigator also exchanged emails with the family and #USD 367 staff between August 29, 2022 and September 26, 2022 to gather additional information and to clarify documentation.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the LEA and the complainant. Some of the documentation was prior to 12 months from the date this complaint was received, and were not considered in this investigation, but

was reviewed for historical context. The following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Plan (IEP), dated March 9, 2021
- Email from Ms. Meyers to parent dated September 27, 2021 at 10:13 a.m.
- Email from Ms. Meyers to parent dated October 14, 2021 at 9:27 a.m.
- Email from Ms. Meyers to parent dated October 23, 2021 at 3:02 p.m.
- Email from Ms. Meyers to parent dated October 24, 2021 at 1:35 p.m.
- Email from parent to Ms. Meyers dated October 24, 2021 at 8:51 a.m.
- IEP, dated February 23, 2022
- Progress Report, dated March 23, 2022
- District response to issues, dated September 7, 2022
- Progress Report, dated September 9, 2022
- Kansas State Board of Education License, Margaret Meyers, Expiration: 3/14/2027
- Email from Ms. Meyers to parent dated January 13, 2022 at 8:37 p.m.
- Kansas State Board of Education License, Jennifer Ann Brown, Expiration: 11/8/2027
- Student and staff schedules, undated, beginning at 8:00 a.m. - 2:00 p.m., and beginning at 7:45 a.m. - 2:15 p.m.
- District response dates September 7, 2022
- Email from Ms. Meyers to Dr. Wickham, dated September 23, 2022 at 2:35 p.m.

Background Information

This investigation involves a 14-year-old female student who is currently enrolled as a ninth grader at Hillsdale Learning Center in USD #367. She lives with her mother, father, and siblings.

She receives special education and related services as a child with autism. She additionally receives occupational and speech services. She previously attended Osawatomie Middle and High Schools.

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 #367, 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 student access to her general education peers.

Positions of the Parties

The complainant alleged that her child was separated from her general education peers when her life-skills program was moved into a separate special education school in another community. As a result, she was not able to participate in school community activities such as class photos. She further alleges that students in the Life Skills program and the special education program for students with emotional and behavioral needs behaviors are in this building and safeguards are not in place to protect her daughter from these potentially dangerous students.

The district responded that they are "committed to providing the full continuum of services as required by IDEA. The IEP written indicated the setting in which she would be attending and the reasons why. As far as access to general education curriculum, the IEP team determined via data that this would not be appropriate to meet her needs and she needs a parallel curriculum. Access to general education peers has been limited due to Covid protocols and precautions, and it is noted that the few times initiated by staff were not successful.

Findings of the Investigation

The March 9, 2021 IEP documents that at the beginning of the 2021-2022 school year the student's services move to USD 368, Public off-site preschools or off-site nonpublic buildings. The remainder of the service minutes are listed as locations where students with disabilities are removed from the general education environments.

The March 9, 2021 IEP section for Participation with Non-Disabled students in the regular education environment is checked that the student will be attending a Life Skills class and will be away from regular education peers for the majority of her day. It is acknowledged in this section that the benefits of the program outweigh potential harmful effects. It is further noted that her classroom is off site from a general education school, so assemblies and special events are not available nor appropriate for the student.

The March 9, 2021 IEP Transition Plan lists functional activities of daily living such as self-care, microwave cooking and basic house cleaning as priorities with 45 minutes four days per week allocated to these skills. These activities. In the communication present level, it is written,

the student may experience challenges interacting with and accessing her environment in and out of the general education curriculum. Her current communication skills have an impact on her academic and social success within her educational setting. If she is not able to communicate her message, she may not be able to get her needs and wants met in her environment which may in turn decrease her social interactions creating fewer communication opportunities. Her exceptionality impedes her involvement and progress in the general education curriculum.

The February 23, 2022 IEP lists Osawatomie High as the neighborhood school and Hillsdale Learning Center as the Attendance building. Hillsdale Learning Center is listed for all special education and related services. Hillsdale is coded as a special day school which provides any of the following: 1) specialized curricula for exceptional children, 2) modified facilities and equipment for exceptional children, or, 3) interdisciplinary services for exceptional children. She receives 50 minutes of extracurriculars 4 days every week at Hillsdale Learning Center. The participation with non-disabled students in the regular education environment section is the same as the March 9, 2021 IEP.

The district reported that Community Based instruction and opportunities to interact with nondisabled peers did not occur during the 2021-2022 school year due to continuing concerns about Covid in community settings.

Applicable Regulations and Conclusions

According to federal regulations at 34 C.F.R. 300.42 and Kansas regulations at K.A.R. 91- 40-1(ttt) the IEP team must consider the services needed for the child to address IEP goals, access the general curriculum, and participate in extracurricular and nonacademic activities with students without disabilities. In this case the IEP team needs to consider the extent to which the students participated in extracurricular and nonacademic activities with students without disabilities.

In this case, both IEPs in effect for the student during the past 12 months clearly document that the IEP team prioritized focusing on a functional curriculum. Further, they documented that the benefits of being in a specialized life skills program outweigh any potential harms of not being around nondisabled peers.

It is noted that the district has proposed for the student to attend a Level program in Prairie View with paraeducator support. Both parties agree this program will be a good compromise to meet the student's functional curriculum/life skills goals and opportunities to interact with non-disabled peers.

It is further noted that this investigation was limited to the past twelve months and much evidence pertinent to this complaint was prior to 12 months, whether or not they have a solid basis.

Based on the foregoing, the allegation that #USD 367 failed to ensure the student had access to the general education curriculum and her general education during the past twelve months *is not substantiated*.

Issue Two

> The USD #367, 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 appropriately qualified teachers for the student.

Positions of the Parties

The complainant alleged that a certified teacher was not in the classroom full time denying her child of a FAPE. Instead, the teacher was split across two classrooms. She alleges that while a certified teacher was in the building most of her child's instruction was provided by paraeducators.

The district responded that the student had an appropriately certified teacher certified Speech and Language Pathologist (SPL) for the student during the last twelve months. As is allowed in Kansas, paraeducators worked with the student under the direction of the teacher.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the complainant and staff in USD #367.

The findings of Issue One are incorporated herein by reference.

The district reported that for the 2021-2022 school year Jennifer Brown was the student's case manager/teacher. She is certified in both adaptive and low-incidence special education, kindergarten through grade 12 in Kansas. Her teaching license is current through November 8, 2027.

Chad Wilson was also responsible for special education minutes in the February 23, 2022 IEP. He is certified in Kansas in high-incidence special education, kindergarten through grade 12 through September 8, 2027.

A number of paraeducators were assigned to work in the Life-skills classroom as evidenced by class and staffing schedules.

The district reports that fourteen students attended the transition aged Life-skills program at Hillsdale Learning Center during the 2021-2022 school year. The students were assigned into one of two classrooms based on age and a certified teacher was assigned to each class. The student was placed in the classroom with the older students (18-21) in spite of being aged 14. The parent and teacher agreed this classroom was a better fit for her transition goals and separated her from a student that had previously been aggressive to her. The ECKSEC Coordinator stated that the certified teacher was in the classroom with the student through lunch, overseeing paraeducators delivering instruction and providing direct instruction to students. She stated the teacher was responsible for instructional planning and IEP management for the entire school day. She further stated that between 12:15 - 2:00 daily practice on social skills, art and cooking occurred. These activities were carried out and supervised by paraeducators.

The parent reported that the student's teacher was split between the two classrooms and that paraeducators were responsible for providing the majority of the instruction. She states that at the end of the 2021-2022 school year that the student was in the classroom with three additional students, the teacher and one paraeducator.

The February 23, 2022 IEP listed both Ms. Jennifer Brown and Chad Wilson (reported by the district as the special education teacher in the other life skills classroom at Hillsdale Learning Center) as providing special education minutes for the student.

The Progress Report for the 2021-2022 school year was prepared by Jennifer Brown.

The 2021-2022 classroom schedule submitted by the district showed how the staff were allocated for student instruction.

schedule	activity	staff
8:00 - 8:15	breakfast/grooming	social worker
8:15 - 9:00	Daily prep in group of 4 students	teacher
9:00 - 9:45	Calendar and IEP goals	social worker
9:45 - 10:30	Production/Workboxes	teacher and para
10:30 - 11:15	Lesson or supporting activities	teacher and social worker
11:15 - 11:45	Lunch	para and social worker
11:45-2:00	Teacher planned activity	Teacher and para

The district and parents agree that the student has not attended school during the 2022-2023 school year and plan for the student to attend a different program that will work on the current services and goals in her current IEP.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.156; 34 C.F.R. 300.207 ensures that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes paraeducators.

It is found that the teachers for the student holds the appropriate teacher credentials for Kansas and are adequately prepared to instruct the student. It is noted that the student plans to attend a different school during the 2022-2023 school year and the preparation and training of the teacher was not reviewed as no documentation was provided showing this change in services or placement.

Although the qualifications of the paraeducators was not part of the complaint it is important to examine the role of the paraeducators for students. According to the Kansas State Department of Education Kansas Special Education Process Handbook (undated)

> The State of Kansas has no statewide requirements for employment as a paraeducator or paraprofessional in a school; however, state and federal funding for certain positions may have requirements pertaining to those positions. Individual local education agencies (LEAs) may set requirements for employment. Paraeducators (paras) cannot be given responsibility for designing or be the primary person in charge of delivering classroom content.

The manual further provides examples of special education services a paraeducator may perform such as assistance at recess, lunch, club activities, and to support activities that are directly related to implementing the child's IEP.

Based on the foregoing, the allegation that USD #367 failed to provide appropriately qualified teachers for the student *is not substantiated*.

Issue Three

> The USD #367, 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 adequate support to guarantee student safety, to, from, and during school.

Positions of the Parties

The complainant alleged that her child was bussed over 40 minutes each way with dangerous students. She stated that her daughter does not have the means to understand if she were in a dangerous situation nor communicate if something happened to her. The complainant

further alleged that potentially dangerous students and her student were allowed to move about the school building freely, exposing her daughter to the potential danger posed by these students. The parents contend that during tours they were assured that the two programs would be separate, but in reality, they were not.

The district responded that the bus was supervised by a bus aide and students were assigned seats. They further state that students were met by school staff to ensure they were supervised as they entered and exited the building. In regard to safety while in the school building, they provided the family a tour of the building showing how students in each of the two programs would be separated during the day. They report that the students in the other program are wanded prior to entering the building to further ensure safety. They stated that multiple staff members supervised students, including the students throughout the school day.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the complainant and staff in USD #367.

The findings of Issues One and Two are incorporated herein by reference.

The March 9, 2021 IEP shows the student received special transportation 40 minutes daily and a bus aide for her bus round trip to and from home and school.

The February 23, 2022 IEP shows the student 50 minutes of special transportation daily when school is in session and during Extended School Year (ESY) with the additional support of a bus aide.

Parent reported that during the 2021-2022 school year her student was hit and had her hair pulled on the bus by a classmate in the Life Skills program. She reported that while students are assigned seats the bus is full and there is no place for her to be safe. She further states that one of the students in the other program stood up on the bus and threatened to shoot up the school during the spring semester of 2022.

The parent reported that she toured Hillsdale prior to the start of the 2022-2023 school year and met with Dr. Vossler and Ms. Meyers and again expressed concerns with her student being bused attending a separate building with students who are dangerous.

The district and parent both report that the student has not attended the 2022-2023 school year due to the parent's safety concerns.

The district reported that there are a total of seven students that ride the student' bus 40-50 minutes a day. Three of the students are in the other program and four and in the student's Life Skills Program. The district further reports there is an aide on the bus, students have assigned seats and there have been no incidents between students in the different programs.

The district reports that a Hillsdale staff meets the students when deboarding in the morning and when reboarding in the afternoon.

Applicable Regulations and Conclusions

Some of the concerns expressed in this complaint are outside the purview of IDEA and were not investigated. Student safety is addressed by the Kansas School Safety and Security Act (K.S.A. 72-6141, et.seq.) and is not considered in a child complaint for IDEA compliance.

In this case the complaint was directed to the IEP team's obligation under IDEA to identify student educational needs, services and supports related to recognizing danger and protecting herself in unsafe situations, such as special transportation.

Regulations at 34 C.F.R. 300.320(a)(4)(i)) and K.S.A. 72-3429(c)(4) state that an IEP must include a statement of the program modifications, or supports for school personnel that will be provided to the child. These supports may include materials or modifications to the environment. The program modification and/or supports must indicate the projected date for the beginning of the services or supports, including the frequency, location, and duration.

In this case the March 9, 2021 and February 23, 2022 IEPs determined and documented that the student would receive daily special transportation and a bus aide for the duration of both IEPs. Nothing was documented in either IEP about the student' needing supports or goals for safety in or around the school, although the parent expressed safety as a high priority for her daughter in the March 9, 2021 IEP.

Based on the foregoing, according to IDEA and Kansas special education regulations ***it is not substantiated*** that adequate supports and services for the student's safety as agreed upon in the IEP were not provided.

Complaint Investigator

Donna Wickham

Donna Wickham, Complaint Investigator

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.

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 #379
ON SEPTEMBER 14, 2022

DATE OF REPORT: OCTOBER 18. 2022

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on September 19, 2022. On September 19, 2022, the investigator spoke with Anita Breen, Director of Special Education for the Twin Lakes Special Education Cooperative.

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

- Eligibility and Multidisciplinary Team Report dated September 15, 2021
- IEP for the student dated September 15, 2021
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated September 15, 2021
- Email exchange dated December 9, 2021 between the parent and the director of the cooperative
- Email dated August 18, 2022 from the parent to the director of the cooperative
- Email exchange dated August 23, 2022 between the parent and the director of the cooperative
- Notice of Meeting dated August 22, 2022
- Email dated August 26, 2022 from the building principal to the parent
- Meeting notes dated August 26, 2022

- Email dated August 31, 2022 from the parent to the building principal
- Letter dated August 31, 2022 from the student's physician
- IEP for the student dated September 7, 2022
- Conference Summary – IEP Team Considerations dated September 7, 2022
- Prior Written Notice for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated September 7, 2022
- Email exchange dated September 8-9, 2022 between the building principal and the parent
- Email exchange dated September 13-14, 2022 between the building principal and the parent
- Email dated October 5, 2022 from the special education teacher to the director of the cooperative
- Email dated October 6, 2022 from the special education teacher to the director of the cooperative

Background Information

This investigation involves a six-year-old boy who is enrolled in the 1st grade in the local Pre-K to 3rd grade building. In September 2018, following an Enterovirus infection, the student was diagnosed with acute flaccid myelitis, a rare but serious nerve-related condition similar to polio that affects the spinal cord. Symptoms include arm and leg weakness and decreased reflexes.

Speech/language, Physical Therapy, and Occupational Therapy services were provided to the student through a hospital setting prior to his enrollment in the public school system at the Kindergarten level. The student was first determined to be eligible for special education and related service under the categories of Multiple Disabilities and Speech/Language Impairment in September 2021 following an initial evaluation.

Academically and socially, the student is operating at grade level. However, according to his September 7, 2022 IEP, the student lacks "functional lower extremity strength and therefore is unable to stand effectively to assist with transfers. Core musculature is much improved but is weak enough that when sitting unsupported he could fall. Knee and hip flexion contractures do present some limitations for positioning." The student's fine motor skills are delayed,

and he needs assistance with table top activities including opening markers and glue sticks. He is not independent for toileting.

The student currently receives speech/language support and both Physical and Occupational Therapy.

Issue

In her complaint, the parent raises the following single issue:

> The district failed to provide the student with consistent support from a paraeducator who is capable of providing the assistance called for in his 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.

Parent's Position

It is the position of the parent that the district has not – since the beginning of the 2022-23 school year – provided consistent support to the student from a paraeducator as required by his IEP and as recommended by the student's doctor. The parent asserts that the student had no paraeducator support whatsoever on August 13 or 14, 2022. The parent further asserts that none of the paraeducators assigned to the student since the start of the school year have been able to lift the student in order to assist him with toileting.

District's Position

The district contends that the minutes of support required by the student's IEP have been provided. According to the district, there were two half days (September 13 and 14, 2022) when there was no paraeducator in the

classroom, but support was provided by the classroom teacher, the school nurse, and the special education teacher. The district asserts that while support was provided by more than one staff member prior to September 19, 2022, special education services in the general education setting are now being provided by a single staff member.

Investigative Findings

The "Accommodations/Modifications" portion of the "Anticipated Services to be Provided" section of the student's September 15, 2021 IEP includes the following:

- "Staff assistance" for fine motor tasks such as cutting food, opening containers, etc. because the student cannot always open items or cut food;
- "Staff assistance" with toileting because the student needs assistance moving himself from the wheelchair to the toilet; and
- "Staff assistance" with mobility to aid the student in getting into and out of his wheelchair for school activities and to help the student with navigating his wheelchair in challenging settings.

The "Special Education and Related Services" section of the September 15, 2021 IEP states that the student will receive

- 400 minutes of special education services 1 day a week in the general education classroom;
- 410 minutes of special education services 1 day a week in the general education classroom;
- 430 minutes of special education services 1 day a week in the general education classroom;
- 410 minutes of special education services 2 days a week for 3 out of 4 weeks in the general education classroom; and
- 430 minutes of special education services 2 days a week every fourth week.

Daily variation results from changes in the student's schedule due to the provision of speech/language, occupational therapy, and physical therapy services.

One paraeducator (TD) was assigned to assist the student throughout the 2021-22 school year. In an email exchange in December 2021, the parent and the director of the cooperative engaged in discussions regarding having TD move with the student to first grade.

For the 2022-23 school year, TD was assigned other responsibilities, and another paraeducator (CH) was chosen to assist the student for his first-grade year. When the parent objected to having CH support the student in first grade, other paraeducators (SC, CP, AG, and KB) were assigned to provide support to the student on a temporary basis while the district endeavored to find another paraeducator for the student.

The first day of school for the district for the 2022-23 school year was August 17, 2022. According to a summary provided by the district, four paraeducators (SC, CP, AG, and KB) provided support to the student between August 17 and September 13, 2022. CP – a substitute paraeducator for the district – provided the bulk of that support (14 of 19 days). While CP was able to provide classroom support to the student, she was unable to lift him. When lifting was needed – for toileting, for example – other staff members provided that assistance.

After approval was given by the Board for the hiring of additional paraeducator staff for the building, a new paraeducator was selected to work with the student on September 13, 2022, but that person did not accept the position.

Another paraeducator (MH) was then assigned to the student and began supporting him on September 14, 2022. TD was also in the classroom on September 14, 2022 to provide training to MH. MH and TD worked together for two days – September 14 and 15, 2022. CP returned on September 16, 2022 to work with the student for one day. MH then began working independently with the student as of September 19, 2022 and continues in that position.

In an email to the director of the cooperative dated August 18, 2022, the parent wrote:

> "I know we haven't talked about this para situation since December but I have some concerns/issues. [The student] didn't get to keep his para from last year [TD] and we are all very upset…His teacher has said they hired a para for him [CH]…which I'm 100% against as we don't get along and I don't trust her. [The student] is very selective in who can care for

> him and take him to the bathroom…I really don't understand why they wouldn't let an amazing para follow him when it was in the best interest of [the student]…I am not willing to risk his health whether that be mental or physical. In the meantime he's been given paras that can't even lift him, and he's very uncomfortable with. The first day of school no one took him to the bathroom and when I picked him up to go home he couldn't even make it 5 minutes…we're off to a horrible start. He's going to have a very intensive surgery the end of October so we're going to need a one on one para, hopefully one we can trust.**"**

The parent sent another email to the director on August 23, 2022, writing:

> "Just checking in to see if you received my last email. I am very frustrated with this whole situation. His care has been subpar at best. We have an IEP meeting on September 7th but I don't feel like he should have to suffer until then. He's almost landed in the hospital before for obstructed bowels and we're almost there again. He's not comfortable with the random paras he's been getting and so he hasn't gone poop since school started. I'm not going to put him through the stress of a hospital for something that could have been prevented."

Notice of the annual IEP team meeting was provided to the parent on August 22, 2022.

The director of the cooperative responded to the parent via email on August 23, 2022 writing:

> "I did visit with [the special education teacher and the building principal]. They both said that they talked with you about the care for your son. They also said he was very good at advocating when he needed to use the restroom. Please rest assured that his needs are being met at school (IEP services). The placement of paraeducators is a decision that is made by the special education teacher and the building administration. It is best for students to work with a variety of people, so they learn to adapt to different personalities. My suggestion to you, if you still have concerns, is to call a team meeting with the IEP team at [the school]. That is the first step to resolving any unsolved issues you may have…"

The parent responded by email on August 23, 2022 writing:

> "...Why do other children have consistent paras and he doesn't? Why does he get paras that can't even lift him?...Why do I get no say whatsoever in who takes care of my child? It is not in his best interest to have ever changing paras. He does better with consistency; last year proved that..."

The director responded:

> "...you have posed some great questions. Again, I would suggest you request an IEP meeting to discuss these issues with the team. As far as para assignment goes, that is the decision of the teacher and administrator of the school. If you need any help facilitating an IEP meeting, please let me know. I would be glad to make that happen."

A meeting was held on August 26, 2022 to discuss the parents' concerns regarding paraeducator services. In attendance were the parents, the special education teacher, the director of the cooperative, the school psychologist, the student's classroom teacher, the building principal, and the school nurse. At the meeting, it was determined that the para who had been designated to support the student at the start of the school year would no longer be assigned to the student. Bathroom breaks would be documented and reported to the parents on a weekly basis. The school nurse, the special education teacher and the student's Kindergarten para would assist the student for toileting until a new para could be hired and trained by the former para (if the newly assigned para had not worked with the student previously). Assurances were given that the classroom teacher and any para assigned to the student would be able to lift him.

Following the meeting, the building principal sent a summary of the meeting to the parent asking for her feedback on its contents.

On August 31, 2022, the parent emailed the building principal a letter from the student's doctor dated August 31, 2022 stating:

> "Consistent care givers to facilitate transfers impacts [the student's] bowel routine, as well as his ability to optimally participate in school activities. Given this, I would recommend a consistent para while at school to assist with transfers and school based activities."

An IEP team meeting was held on September 7, 2022, and an annual review of the student's IEP was conducted. The parent, the school psychologist, the classroom teacher, the building principal, the speech/language pathologist, and the special education teacher were in attendance.

The "Accommodations/Modifications" portion of the "Anticipated Services to be Provided" section of the student's September 7, 2022 IEP includes the same accommodations as were included in the student's September 15, 2021 IEP:

- "Staff assistance" for fine motor tasks such as cutting food, opening containers, etc. because the student cannot always open items or cut food;
- "Staff assistance" with toileting because the student needs assistance moving himself from the wheelchair to the toilet; and
- "Staff assistance" with mobility to aid the student in getting into and out of his wheelchair for school activities and to help the student with navigating his wheelchair in challenging settings.

The "Special Education and Related Services" section of the September 7, 2022 IEP states that the student would receive

- 370 minutes of special education services 1 day a week in the general education classroom for 3 out of 4 weeks;
- 430 minutes of special education services 1 day a week in the general education classroom every fourth week;
- 410 minutes of special education services 1 day a week in the general education classroom every week; and
- 430 minutes of special education services 3 days a week in the general education classroom.

Daily variations continue to result from changes in the student's schedule due to the provision of speech/language, occupational therapy, and physical therapy services.

According to the Conference Summary – IEP Team Considerations dated September 7, 2022, paraeducator support would be "offered in the classroom at all times…The plan is for a single para to begin in the classroom Sept. 13."

On September 8, 2022, the parent sent an email to the building principal questioning who would be training any para assigned to work with the student.

On September 13, 2022, the parent sent an email to the building principal asking, "Does [the student] have a para today? I couldn't help but notice he didn't have one when I dropped him off this morning. Also when I picked him up for his second therapy he hadn't gone to the bathroom yet and his pull-up was soaked."

The building principal responded via email on September 14, 2022, stating:

> "I can't speak on specific paras yesterday [September 13, 2022], but I know that [the classroom teacher] was working with him as was [CP]. [CP] is a long-time para in our building who recently retired and is now subbing."

According to an email from the special education teacher to the director of the cooperative dated October 5, 2022:

> "There were two days [September 13 and 14, 2022] that there was no para in the morning. The teacher stated that she would be ok without one as long as someone could periodically check on them and that someone could do the toileting. I checked in with her several times and each time she said they were good. [The school nurse] did the toileting. Duties the teacher would have covered would be moving him from his wheelchair to the floor, wheelchair to his walker, and some fine motor assistance.
>
> In the afternoon [of September 14, 2022], he actually had two paras, [MH and TD so that TD] could work with [MH] and train her."

Records are kept regarding the student's toileting during school hours. On September 13, 2022, the student was assisted for toileting at 11:45 AM as well as at 1:45 and 3:00 PM. On September 14, 2022, he was assisted for toileting at 9:10 and 11:45 AM and again at 2:45 PM. On average, a toileting break takes approximately 15 minutes.

On September 14, 2022, the Kindergarten para arrived at the first-grade classroom at approximately 12:15 PM, and the newly assigned para arrived at

approximately 12:30 PM. During the approximately 230 minutes between the start of the school day and the arrival of the Kindergarten para, the student received approximately 30 minutes of support for toileting.

On October 6, 2022, the special education teacher provided this additional statement to the director of the cooperative:

> These were days that we were training and transitioning paras after the board meeting approved the hiring of an additional person…We were attempting to train the new staff, shift staff, and retrain staff for new positions those two days. We also had staff absent. The teacher was willing to work with us and based on needs throughout the building we did the best we could.

Summary and Conclusions

The student's September 15, 2021 IEP required that the student receive between 400 and 430 minutes per day of special education support in the general education setting. His September 7, 2022 IEP requires that he receive between 370 and 430 minutes per day of special education support in the general education setting. (Range variations reflect schedule changes due to the provision of the student's related services of Speech/Language, Occupational Therapy, and Physical Therapy.)

When, at the start of the 2022-23 school year, the parent objected to the assignment of a particular individual selected by the district to provide paraeducator support to the student in first grade, the district immediately began exploring other options, ultimately hiring more para staff to meet the needs of the student and the building as a whole.

Between the start of school on August 17, 2022 and September 19, 2022 (when a single para was assigned to provide the general education support of the student), a total of three paras had provided special education service to the student in the general education setting. A single substitute paraeducator provided the majority of the student's general education classroom support during this early period. However, that substitute para was not able to lift the student, so other staff members, including the special education teacher and the school nurse, assisted with the student's toileting and positioning activities.

While the assignment of multiple paraeducators to support the student for his first month of the school year may not have been ideal, the district clearly attempted to provide the student with the support called for in his September 15, 2021 and September 7, 2022 IEPs. Although the parent objected to the absence of a consistent para to cover all of the student's needs, the student's September 2021 and September 2022 IEPs did not require that a single individual provide all services and noted only that "staff" would assist the student in several key areas, including toileting and repositioning.

On September 13 and 14, 2022, the district did not have sufficient para/para substitute staff available to provide coverage for the student for the full school day. On both these dates, paraeducator support was only provided in the afternoons. In the mornings on both days, the classroom teacher assisted the student with activities that were impacted by his fine motor delays. The classroom teacher assisted the student with repositioning and other staff members aided with toileting. Although the special education teacher made numerous check-ins to ensure that things were going well, the student did not on these two mornings receive the special education services called for in his September 7, 2022 IEP.

Because, for two mornings, the district failed to provide the special education support in the general education setting required by the student's IEPs, a violation of special education statutes and regulations is identified.

The Office of Special Education Program (OSEP) is a division within the Office of Special Education and Rehabilitative Services (OSERS). OSEP administers the Individuals with Disabilities Education Act (IDEA) and occasionally issues letters to provide guidance on special education topics.

In Letter to Clarke, 48 IDELR 77 (OSEP 2007), OSEP opined that decisions regarding whether a missed service needs to be made up are made on a case by case basis with "emphasis on the impact of the missed services on the child's ability to contine to progress and meet the annual goals in the IPE." In this case, the impact, if any, of two half days of missed paraeducator support in the general education setting, was minimal because it did not deprive the student of the opportunity to participate in general education instruction on either of these mornings. Therefore, no compensatory services will be awarded.

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 #379 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) Within 10 calendar days of the date of this report, submit to SETS for approval a plan for the provision of special education services to this student when the paraeducator designated to provide support to the student in the general education setting is absent.

3) Within 5 calendar days of receipt of SETS' approval of the plan specified above under Corrective Action 2, provide a copy of that plan to this parent.

4) Further, USD #379 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 #501

ON OCTOBER 21, 2022

DATE OF REPORT OCTOBER 31, 2022

This report is in response to a complaint filed with our office on behalf of Student by his mother, Parent. In the remainder of the report, Student will be referred to as "the student." Student' mother is Parent and in the remainder of this report she will be referred to as "the mother," "the parent," or "the complainant."

The complaint is against USD #501, Topeka Public Schools. In the remainder of the report, " the "school," the "district," and the "local education agency (LEA) shall refer to USD #501.

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 21, 2022 and the 30-day timeline ends on November 21, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on October 22, 2022 and the Director of Special Education, Dr. Jennifer Harrington, USD #501 on October 25, 2022.

The Complaint Investigator also received emails from the parent and USD #501 between October 22 and October 26, 2022.

Additional allegations were made by the complainant but are outside the jurisdiction of the Individuals with Disabilities Education Act (IDEA) so were not investigated. The parent had the resources necessary to pursue these allegations.

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

- General Education Intervention Referral, dated August 17, 2022
- Reference to an email from parent to Dr. Jennifer Harrington, Director of Special Education, Topeka Public Schools dated September 23, 2022
- Email from Parent to Ms. Amy Wagner, Assistant Principal, French Middle School dated September 29, 2022 at 7:31 a.m.
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent, dated September 30, 2022, signed October 17, 2022 by Parent
- Email from Ms. Jean Ryan, 504 point of contact, Topeka Public Schools to Ms. Wagner, dated October 4, 2022 at 1:01 p.m.
- Email from Ms. Wagner to Parent dated October 5, 2022 at 2:41 p.m.
- Email from Parent to Ms. Wagner dated October 5, 2022 at 3:02 p.m.
- Email from Ms. Wagner to Parent dated October 5, 2022 at 5:07 p.m.
- Email from Ms. Wagner to Ms. Ryan dated October 5, 2022 at 2:38 p.m.
- Email from Parent to Ms. Wagner dated October 6, 2022 at 6:57 a.m.
- Email from Ms. Wagner to Parent dated October 6, 2022 at 1:51 p.m.
- Email from Ms. Wagner to Parent dated October 7, 2022 at 2:39 p.m.
- Email from Ms. Wagner to Parent dated October 12, 2022 at 10:09 a.m.
- Email from Ms. Wagner to Parent dated October 13, 2022 at 2:10 p.m.
- Email from Parent to Ms. Wagner dated October 13, 2022 at 2:22 p.m.

- Email from Parent to Ms. Wagner dated October 13, 2022 at 2:23 p.m.
- Email from Parent to Dr. Anderson dated October 14, 2022 at 7:00 a.m.
- Email from Parent to Ms. Wagner dated October 18, 2022 at 7:18 a.m.
- Email from Parent to Ms. Wagner dated October 18, 2022 at 8:46 a.m.
- Email from Parent to Ms. Wagner dated October 18, 2022 at 10:51 a.m.
- Email from Parent to Dr. Anderson and Dr. Harrington dated October 18, 2022 at 7:55 p.m.
- Email from parent to Dr. Harrington dated October 18, 2022 at 3:31 p.m.
- Email from Parent to Dr. Anderson, Office of Civil Rights and Ms. Billie Wallace, Assistant Superintendent, Teaching & Learning, Topeka Public Schools dated October 19, 2022 at 11:10 a.m.
- Email from Parent to Dr. Anderson and Ms. Wallace dated October 20, 2022 at 7:12 a.m.
- Email and parent letter from Parent to Dr. Anderson and Ms. Wallace dated October 21, 2022 at 8:37 a.m.
- Email and timeline from Parent to Complaint Investigator, dated October 22, 2022 at 12:37 p.m.
- Email from Parent to Complaint Investigator, dated October 22, 2022 at 5:56 p.m.
- Email from Parent to Complaint Investigator, dated October 22, 2022 at 6:04 p.m.
- Email from Parent to Complaint Investigator, dated October 22, 2022 at 7:11 p.m.
- Email from Parent to Complaint Investigator, dated October 22, 2022 at 7:12 p.m.
- Email from Parent to Dr. Anderson, Ms. Wallace and Dr. Harrington dated October 24, 2022 at 8:00 a.m.
- Email from Ms. Wagner to Parent dated October 24, 2022 at 10:23 a.m.
- Copy of document on Topeka Public Schools letterhead that includes parent correspondence in black ink with French Middle School Principal and Assistant Principal response in blue ink, undated

Background Information

This investigation involves a 6th grade student enrolled at French Middle School in USD #501. He is not currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA). He receives accommodations for learning and behavior through a General Education Intervention Plan (GEI). He was referred for a special education evaluation by his mother on September 23, 2022 and the parent signed consent for evaluation on October 17, 2022. A special education evaluation is ongoing within acceptable timelines.

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: USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to provide Free and Appropriate Public Education (FAPE) to the student by not providing accommodations regarding discipline.

Positions of the Parties

The complainant alleged that her child is struggling academically, but especially behaviorally at the middle school even with general education interventions. The Parent states that she has requested an evaluation to determine if her child is eligible for special education services. She alleges that while the district is conducting the special education evaluation, he is being held to general education school and district standards and not being afforded the protections of FAPE for his disability during this time.

The district responded that they are complying with the Individuals with Disabilities Education Act in regard to this student's services while the student is undergoing the

special education evaluation. The district received a parent request to evaluate the student for special education services and provided a PWN to evaluate the student. They are communicating with the parent to review the existing student data and schedule additional evaluation. They stated they are operating within the timelines to schedule and complete that evaluation.

Findings of the Investigation

Parent interview and review of the General Education Intervention (GEI) indicate that the student has received academic and behavior interventions since kindergarten.

The Parent reports that the student began experiencing behavioral problems when he started middle school. As a result, she contacted the school with those concerns and to discuss solutions.

Ongoing emails during September and October show that the Parent and school staff discussed student disruptions during class and in the afterschool program.

Ongoing emails during September and October show that the Parent requested a review and revision of the GEI, and a meeting was held with ongoing discussion.

The parent reported she made a written request for a special education evaluation to the district on September 23, 2022.

The district provided the parent with a Prior Written Notice for Evaluation or Reevaluation and Request for Consent (PWN), dated September 30, 2022 to evaluate the child to determine if he is eligible for special education and related services as a child with a disability. The PWN was subsequently signed by the parent on October 17, 2022.

Emails indicated the parent requested exceptions to classroom and school-wide behavioral expectations based on a “known disability” (term used in emails from the parent) and is being punished for his disability and stated he has IDEA discipline protections.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.101(c)(2) states that the determination that a child is eligible, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

The district and parent both agree that the child will be evaluated to determine if he qualifies for special education and related services. According to the PWN that was developed and signed by the parent the evaluation will provide data to make that determination.

34 C.F.R 300.534(a) describes protections for children not yet determined to be eligible for special education and related services. That regulation says that from the date the parent has requested a special education evaluation to the date the evaluation is completed, the school district is deemed to have knowledge that the child is a child with a disability, and that child may assert any of the protections provided for in the special education law.

The evidence shows this parent requested a special education evaluation on September 23, 2022. Therefore, the parent may, on behalf of her child, assert any of the protections provided for in special education law as of September 23, 2022. That does not mean a district must begin providing services on the date the parent requests a special education evaluation. Such an interpretation would violate some of the most core requirements of the IDEA, including that to begin providing special education services to a child, the child must first be determined to be eligible for special education and an IEP must be developed by an IEP team through the procedures specified in the law, and the district must receive written parent consent before any implementation of any services in an initial IEP. The provision in 34 C.F.R. 300.534(a) to "protect" children undergoing an initial evaluation does not (an cannot) erase any of these statutory provisions.

The "protections" referred to in 34 C.F.R 300.534(a) do not refer to services. The "protections" refer to the disciplinary protections in the IDEA. That means that, beginning on the date the parent requests a special education evaluation, the student

may not be suspended for more than 10 consecutive school days unless a manifestation determination review (MDR) shows the behavior is a manifestation of the (suspected) disability. It also means that if, beginning on the date the parent requests a special education evaluation, the child is suspended for more than 10 consecutive school days, or is suspended for more than 10 cumulative school days for behavior that is not a manifestation of the suspected disability, the school district is obligated to provided educational services to the child, although it may do so in an alternative setting.

The student has been referred for a special education evaluation, but until it is determined if he is eligible for special education and related services, an IEP has been developed, and consent to implement the initial evaluation has been obtained, a determination of denial of FAPE is impossible. There is simply no FAPE obligation at this time.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the student's FAPE was denied.

ISSUE TWO: USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent participation in the student' IEP process.

Positions of the Parties

The complainant alleged that the district offered in-person meetings to discuss her son's academic and behavioral concerns and services in spite of her repeated requests for Zoom or phone meetings to accommodate her vision needs. When she did not agree to in-person meetings because she could not participate, she alleged her son did not receive appropriate services because there was not parent participation.

The district responded that they are complying with IDEA in including the parent in planning and conducting the evaluation. As the student has not been found eligible for special education or related services a discussion of changes in his services and accommodations based on a special education disability eligibility category are premature.

Findings of the Investigation

The following findings are based upon a review of documentation and interview with the complainant and the district.

The findings of Issue One are incorporated herein by reference.

The parent made a written request for a special education evaluation to the district on September 23, 2022 and the district responded to that request with a PWN to evaluate the child to determine if he is eligible for special education and related services as a child with a disability.

Emails indicated that the parent and district have exchanged information about 1) the areas of concern by both the parent and school, 2) a review of the GEI, and 3) areas that the district proposed to evaluate and areas that will rely on record review.

Emails from the parent show the parent requested Zoom or phone meetings due to her health conditions.

An October 14, 2022 letter from the principal offered daily or weekly meetings in-person, via Zoom or by phone call.

Applicable Regulations and Conclusions

The child is not currently receiving special education and related services. He was referred for an initial special education evaluation on September 23, 2022.

At this point the role of parent participation during evaluation is outlined in 34 C.F.R. 300.305(b); 34 C.F.R. 300.300(d)(1) and K.A.R. 91-40-8(c), (d); K.A.R. 91-40-27(e). It states the district has an obligation to follow a process to gather information about the student, including gathering input from the child's parent about the academic, behavioral, and other concerns as well as assist in developing as evaluation plan. These activities take place in the initial phases of an evaluation, referred to as a review of existing data. The parent has a right to participate in the review of existing data, but that participation may be obtained by the district using a variety of methods. K.A.R. 91-40-8(d) states that the district "may conduct its review without a meeting."

After speaking with the parent and reviewing the documents it is found that the district is following regulation in including the parent in preparing for the evaluation. Upon completion of the evaluation, the district is required to meet with the parent to make an eligibility determination. When this evaluation reaches that point, the district will be required to meet with the parent and offer alternative methods of participation for the parent.

It is further found that because the student is currently being evaluated for special education and related services under IDEA, and an eligibility decision has not yet been determined, it is premature to investigate parental participation around the provision of services and interventions.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that parental participation was denied.

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, Ph.D.

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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 501,
Topeka Public Schools: 23FC501-004

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on October 21, 2022, by the parent, on behalf of her child, The student. In the remainder of this decision, the parent will be referred to as "the parent," and the student 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 parent's allegation, was issued on October 31, 2022. That Complaint Report concluded that there were no violations 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 appeal and supporting documents, 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.

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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

ISSUES ON APPEAL

There are two issues on appeal:

ISSUE ONE: USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to provide Free and Appropriate Public Education (FAPE) to the student by not providing accommodations regarding discipline.

Because there appears to be some mixing of issues in this appeal, the Committee finds some clarification is needed. The first issue addressed in the complaint report is clearly the issue of FAPE. The issue of parent participation is addressed in issue 2. Therefore, the committee will address these issues separately, as did the investigator.

On page 2 of her appeal, the parent states "While I understand that The student is not entitled to special education services or support, as a parent I should have a right to have my concerns addressed…" However, in the next paragraph, the parent says "The lack of response to meet, did absolutely interfere with The student receiving a FAPE…" Issue one, as it is stated in the complaint report, is about, "FAPE to the student by not providing accommodations regarding discipline." The parent's appeal indicates that the parent is asserting that the district's actions, or inactions, "did absolutely interfere with The student receiving a FAPE.

However, FAPE is defined as special education and related services that are provided in conformity with an IEP (34 C.F.R. 300.17). Without an IEP there is no FAPE obligation. The complaint report accurately stated that the student has been referred for a special education evaluation, but until it is determined if he is eligible for special education and related services, an IEP has been developed, and consent to implement the initial IEP has been obtained, a determination of denial of FAPE is impossible. There is simply no FAPE obligation at this time. (See, Report, page 7).

The essential uncontested fact in this case is that this student does not have an IEP. The appeal committee agrees with the finding of the investigator that, under this circumstance, the denial of a FAPE is impossible precisely because there is no FAPE obligation. Therefore, the appeal committee sustains the conclusion of the investigator that the parent's allegation that FAPE was denied to this student is not substantiated.

Issue 2: **USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent participation in the student' IEP process.**

This appears to be the focus of the parent's appeal. The investigator, on pages 8 and 9 of the report, correctly explains the limitations on the parent's right to participate in educational decisions during an initial evaluation. The investigator said:

> Emails indicated that the parent and district have exchanged information about 1) the areas of concern by both the parent and school, 2) a review of the GEI, and 3) areas that the district proposed to evaluate and areas that will rely on record review.
>
> Emails from the parent show the parent requested Zoom or phone meetings due to her health conditions.
>
> An October 14, 2022, letter from the principal offered daily or weekly meetings in-person, via Zoom or by phone call. (Report, page 8).

In her conclusions, the investigator said:

> The child is not currently receiving special education and related services. He was referred for an initial special education evaluation on September 23, 2022.
>
> At this point the role of parent participation during evaluation is outlined in 34 C.F.R. 300.305(b); 34 C.F.R. 300.300(d)(1) and K.A.R. 91-40-8(c), (d); K.A.R. 91-40-27(e). It states the district has an obligation to follow a process to gather information about the student, including gathering input from the child's parent about the academic, behavioral, and other concerns as well as assist in developing as evaluation plan. These activities take place in the initial phases of an evaluation, referred to as a review of existing data. The parent has a right to participate in the review of existing data, but that participation may be obtained by the district using a variety of methods. K.A.R. 91-40-8(d) states that the district "may conduct its review without a meeting."
>
> After speaking with the parent and reviewing the documents it is found that the district is following regulation in including the parent in preparing for the evaluation. Upon completion of the evaluation, the

> district is required to meet with the parent to make an eligibility determination. When this evaluation reaches that point, the district will be required to meet with the parent and offer alternative methods of participation for the parent.
>
> It is further found that because the student is currently being evaluated for special education and related services under IDEA, and an eligibility decision has not yet been determined, it is premature to investigate parental participation around the provision of services and interventions.

The investigator's conclusion that the parent properly participated in the evaluation process is supported by a long series of correspondence through e-mail exchanges, many of which are identified on page 2 and page 3 of the complaint report, and in the parent's appeal. In addition, the parent was provided with a Prior Written Notice (PWN), proposing an evaluation that described the kinds of assessments the district planned for the evaluation of this student. The parent provided written consent for the proposed evaluation. The very act of providing consent for the proposed assessments constitutes at least some participation in the evaluation process.

In her appeal, the parent says the investigator's report "completely disregards that I had asked for an alternative means of meeting participation, which was Zoom."

The parent's appeal cites 34 C.F.R 300.501(b) and (c), stating that parents of a child with a disability must be afforded an opportunity to participate in meetings with regard to identification and evaluation and to be involved in placement decisions. It is important to note, however, that this regulation states these rights belong to "parents of a child with a disability." A "child with a disability" is defined in 34 C.F.R. 300.8 as a child who has been evaluated and found to have a disability and to have a need for special education and related services. The student who is the subject of this complaint has not yet met that requirement, and is not a child with a disability for the purposes of 34 C.F.R. 300.501(b) or (c).

Rather, the provisions regarding parent participation during an initial evaluation are specified in 34 C.F.R. 300.305. That is the regulation that is relevant to this complaint issue. That regulation says the district has an obligation to follow a process to gather information about the student, that involves a review of existing data and information provided by the parent. These activities take place in the initial phases of an evaluation. The parent has a right to participate in the review of existing data, but, pursuant to K.A.R. 91-40-(d) the district may conduct its review without a meeting. Therefore, there

is nothing in these regulations that requires that the district fulfilling the limited requirements for parent participation in an initial evaluation (in 34 C.F.R. 300.305) do so by conducting a meeting. Accordingly, even if the district failed to agree to an alternative means of meeting participation for the parent (and the appeal committee makes no such finding), such as Zoom, that fact, standing alone, is not a violation of law.

For the reasons stated above, the findings and conclusions in the report regarding Issue 2 are sustained.

Related Commentary regarding Issue One

Although not a part of this appeal, the appeal committee believes that, for issue one, it is important to clarify the duties that a school district does have when a district is deemed to have knowledge that a child is a child with a disability because a parent requests a special education evaluation.

Under the provisions of 34 C.F.R. 300.534, the district is deemed to have knowledge that the student has a disability when, along with other specified reasons, a parent has requested an initial evaluation for special education and the student has engaged in behavior that has violated a district code of conduct. Thus, on the date this parent requested an evaluation, September 23, 2022, and thereafter when the student was subjected to suspension, the parent had the right to assert any of the protections of special education relating to disciplinary removals. This interpretation is supported in a recent OSERS guidance document. In Questions and Answers addressing the Needs of Children with Disabilities and the IDEA's Discipline Provisions, 81 IDELR 138 (OSERS 2022). In that guidance document, OSERS says (at Question I-1):

Question I-1: When are children who have not yet been determined eligible for special education and related services under IDEA entitled to the discipline protections?

Answer: A child who has not yet been identified as eligible for special education and related services under the IDEA and has violated a code of student conduct -- and their parent -- **may assert any of IDEA's discipline protections** in circumstances where the LEA is deemed to have knowledge that the child is a "child with a disability" before the behavior that precipitated the disciplinary action occurred (see Question I-2 for further information). 34 C.F.R. § 300.534(a).

There are specific exceptions to when an LEA must be deemed to have knowledge as described above. An LEA would not be deemed to have knowledge if the parent did not allow the LEA to conduct an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 through 300.311 or refused special education and related services under IDEA. Also, an LEA would not be deemed to have knowledge if the child has been evaluated in

accordance with 34 C.F.R. §§ 300.300 through 300.311 and determined not to be a child with a disability under IDEA. 34 C.F.R. § 300.534(c)(2).

Question I-4: What disciplinary protections are available to a child who has been referred for an evaluation under IDEA and is removed for a violation of the school's code of student conduct prior to a determination of eligibility?

Answer: If a child engages in behavior that violates the school's code of student conduct prior to a determination of their eligibility for special education and related services and the LEA is deemed to have knowledge that the child is a child with a disability, the child is entitled to all of IDEA's protections afforded to a child with a disability, unless a specific exception applies. In general, once the child is properly referred for an evaluation under IDEA, the LEA would be deemed to have knowledge that the child is a child with a **disability for purposes of IDEA's disciplinary provisions.** However, under 34 C.F.R. § 300.534(c) and as noted above, the LEA is considered not to have knowledge that a child is a child with a disability if the parent has not allowed the LEA to conduct an evaluation of the child under IDEA, if the parent has refused special education and related services, or if the child has been evaluated and determined not to be a child with a disability under IDEA. In these instances, the child and the parent may not assert any of the disciplinary protections available under the IDEA and the LEA may utilize the same measures applicable to children without disabilities who engage in comparable behavior. However, as set out in I-6 below, certain additional conditions may apply. (Bold print added for emphasis).

That brings up the question of when may a parent assert the disciplinary protections of special education and what are the disciplinary protections that may be asserted by parents?

The disciplinary protections begin on the date on which a district is deemed to have knowledge that the student is a child with a disability and the student is suspended from school for more than ten school days without educational services. When both of those events occur, a parent may assert the right to:

- Request that educational services be provided to the child during suspension, although in another setting;
- Request that the district conduct a manifestation determination review and, if the behavior is a manifestation of the suspected disability to terminate the suspension; and
- Request a due process hearing, request mediation, or submit a formal complaint.

The parent in this case chose to file a formal complaint. That complaint included allegations regarding a failure to provide a FAPE and a failure to provide for a level of participation the parent believed was required. That complaint, and this appeal, did not

allege that the student had been suspended for more than ten school days without educational services after the parent requested the student's initial evaluation on September 23, 2022, which request would have triggered the disciplinary protections listed above.

It should also be noted that even if a child is suspended for more than ten school days in a school year, those suspensions do not count toward providing disciplinary protections when a parent has refused to consent to an initial evaluation (See 34 C.F.R. 300.534(c)(1)(ii). In that case, the suspensions without educational services are only counted beginning the date the parent makes another request for an evaluation.

Another related question is "What constitutes a suspension of a child with a disability?"

A suspension of a child with a disability occurs when a school district removes a child from the educational setting described in the child's IEP for disciplinary reasons.

When a child does not have an IEP, but the parent has requested an initial evaluation, a suspension occurs when a school district removes the student from the regular education classroom for disciplinary reasons and does not provide educational services in an alternative setting. That means, for example, sending the student home or sending the student to the office (with or without educational services).

A suspension does not include when a parent voluntarily keeps their child at home instead of sending their child to school.

A suspension also does not include when a student is sent to an alternative setting within the school building in accordance with a Section 504 Plan or a General Education Intervention Plan for the student to help the student obtain needed respite or to develop skills to enable the student to be successful.

A suspension also does not include students who voluntarily go to another setting within the school building in accordance with a Section 504 Plan or a General Intervention Plan that permits students to voluntarily remove themselves to alternative location to relieve anxiety or to work on controlling their behavior.

CONCLUSION

The Appeal Committee concludes that the complaint report is sustained in its entirety.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 1st day of December 2022.

APPEAL COMMITTEE:

Crista Grimwood

Brian Dempsey

Ashley Niedzwiecki

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #246
ON OCTOBER 12, 2022

DATE OF REPORT NOVEMBER 11, 2022

This report is in response to a complaint filed with our office on behalf of Student by his mother, Parent. In the remainder of the report, cc will be referred to as "the student" and Parent will be referred to as "the mother" or "the parent".

The complaint is against USD #246 (Northeast Public Schools) who contracts with Southeast Kansas Interlocal #637 to provide special education and related services to students enrolled in USD #246. In the remainder of the report, "USD #246," 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 USD #246 received the complaint on October 12, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on October 18, 2022. A second interview was conducted with the parent on November 7, 2022.

USD #246 made the following school staff available for phone interviews as noted below:

- Chris Hattabaugh, Principal at Northeast Junior High School (NEJHS) in USD #246 on October 28 and November 7, 2022
- Renee Scales, Special Education Teacher at NEJHS, on October 28, 2022

- Ray Streeter, Superintendent of USD #246, on October 31, 2022
- Stacey Thompson, Paraeducator at NEJHS, on November 2, 2022
- Erik Stone, Paraeducator at NEJHS, on November 2, 2022
- Starla Parsons, General Education Teacher at NEJHS, on November 4, 2022
- Wendy O'Rand, General Education Teacher at NEJHS, on November 4, 2022
- Amanda Hribar, General Education Teacher at NEJHS, on November 4, 2022

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 April 11, 2022
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent for a substantial change of placement dated April 11, 2022
- Emails dated August 17, 2022 at 12:20 p.m., 12:24 p.m., and 12:32 p.m. between the special education teacher, Ms. Scales, and the parent
- Emails dated August 23, 2022 at 7:19 a.m., 9:02 a.m., 9:04 a.m., and 9:15 a.m. between the NEJHS principal, Mr. Hattabaugh, and the parent
- Parent Meeting Notes dated August 29, September 30, and October 20, 2022 written by Mr. Hattabaugh
- Parent Meeting Notes dated September 30, October 4, and October 20, 2022 written the USD #246 superintendent, Mr. Streeter
- IEP dated October 19, 2022
- Copies of IEP team meeting notes from the October 19 and October 21, 2022 IEP team meeting
- PWN for a material change of services and a substantial change of placement dated October 19, 2022 and signed by the parent on October 21, 2022
- 2021-22 School Year Calendar for USD #246
- Copy of the student's class schedule between August 18 and August 25, 2022
- Copy of the student's class schedule between August 25 and August 29, 2022
- Copy of the student's class schedule between August 29 and September 12, 2022
- Copy of the student's class schedule between September 13 and October 2, 2022

- Copy of the student's class schedule between October 3 and October 24, 2022
- Copy of the student's class scheduled from October 24, 2022 to present time
- Chart showing the student's schedule changes and rationale for each change
- Paraeducators' class assignments for the 2022-23 school year
- Billing records and case notes for the Social Worker between September 1 and October 31, 2022
- Student's attendance records for the 2022-23 school year
- Student's discipline records dated between December 22, 2021 and October 24, 2022
- Text message, phone and correspondence log between Mr. Streeter and the parent dated September 28 through October 20, 2022
- Emails between Mr. Hattabaugh, and the parent dated August 17 through October 24, 2022
- Emails between the special education teacher, Ms. Scales; the three general education teachers, Ms. O'Rand, Ms. Parsons, and Ms. Hribar; and the athletic director/coach, Kevin Wicker, dated August 30 through September 13, 2022
- Response to the allegations dated October 26, 2022 written by Jessica Crager, Assistant Director, SEK Interlocal #637
- The Viking Virtues, school-wide positive behavior support plan
- Discipline Chart for the 2022-23 school year created by Mr. Hattabaugh

Background Information

This investigation involves an eleven-year-old male student with medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Disruptive Mood Dysregulation Disorder (DMDT) who is enrolled in the sixth grade in USD #246. The student transferred into the Northeast Junior High School from Northeast Elementary School at the beginning of the 2022-23 school year. He was originally evaluated and found eligible for special education and related services on February 13, 2020 under the exceptionality category of Other Health Impaired (OHI). In addition to the services required by his IEP, the student currently receives services from a therapist and medication management through the Crawford County Mental Health Center.

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 #246, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically the special education and related services, during the 2022-23 school year.

Positions of the Parties

The parent reported that the school district did not follow the student's IEP when he transitioned to sixth grade at NEJHS at the beginning of the 2022-23 school year. The parent believes this failure resulted in multiple behavioral incidents which caused the student to be suspended from school at the beginning of the 2022-23 school year.

In fifth grade, the student had many disciplinary incidents and the IEP team tried multiple interventions to help the student be successful. During second semester, the student was placed in the special education setting for the majority of the school day and this was found to be effective. The student's IEP was reviewed and revised on April 11, 2022 to reflect this more restrictive setting and USD #246 provided the parent with a PWN requesting consent for a significant change of placement during the 2022-23 school year.

However, USD #246 placed the student in all general education classes with paraeducator support for sixth grade. Once school started, the student began displaying inappropriate behaviors at school and USD #246 changed the student's schedule multiple times to include more services and supports; however, the student continued to have multiple disciplinary referrals. The parent noted the IEP team met

on October 21, 2022 and changed the student's placement to be in the special education setting the majority of the school day.

In addition, the parent reported that the April 11, 2022 IEP was revised to add ten minutes of social work services for a total of 20 minutes per week beginning in sixth grade. However, the student did not start to receive these services until mid-September because of a staffing issue and then he missed several sessions because of being suspended.

USD #246 acknowledged that the social work services were not provided until September 16, 2022 due to a late resignation and the new social worker not being available to start until after the school year began. The district noted that the IEP team met on October 21, 2022 and developed a plan to provide compensatory social work services to the student.

USD #246 also acknowledged that the April 11, 2022 IEP was not implemented as intended at the beginning of sixth grade due to a paperwork error. The IEP document provided to the district by Southeast Kansas Interlocal #637 (SEK #637) was not updated to reflect the changes made at the April 11, 2022 IEP team meeting. The error in the IEP document was not found until the parent filed this child complaint on October 12, 2022 because none of the staff at NEJHS had any reason to suspect the IEP was incorrect. USD #246 noted that staff were all unfamiliar the student because he had just transferred from the elementary school to NEJHS and the superintendent, building principal, and special education teacher all started employment in USD #246 at the beginning of the 2022-23 school year.

However, once USD #246 became aware of the error, the student's IEP team was reconvened on October 19 and again on October 21, 2022 and the IEP was changed to include the more restrictive setting with parent consent.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #246.

The student had two IEPs in effect during the 2022-23 school year. The first IEP was developed on April 11, 2022. This IEP showed the student was to receive 175 minutes per day of specialized instruction in the special education setting, 85 minutes per day of special education support in the general education setting, 10 minutes of behavior consultation every ninth week, and 10 minutes per week of social work services through the end of fifth grade during the 2021-22 school year. Beginning in the sixth grade, this IEP showed the student was to receive 20 minutes per week of specialized instruction in the special education setting, 85 minutes per day of special education support in the general education setting, and 10 minutes per week of social work services.

However, the parent reported and the Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent for a substantial change of placement dated April 11, 2022 stated that during the "IEP school year" the student would receive 85 minutes of para support during specials and recess and 175 minutes of pull-out services in the special education setting every day due to "his explosive behavior". In addition, the IEP team agreed to add 10 additional minutes per week of social work for a total of 20 minutes per week. The PWN signed by the parent on April 11, 2022 does not address the deletion of the behavior consultation services for the 2022-23 school year.

The second IEP was developed during IEP team meetings held on October 19 and continued on October 21, 2022. This IEP showed the student was to receive 330 minutes per day of specialized instruction in the special education setting and 50 minutes per day of special transportation. In addition, this IEP requires that the student receive 30 minutes per week of social work services between October 24 and November 25, 2022 to include 50 minutes of compensatory services. Beginning on November 28, 2022, the student will receive 20 minutes per week of social work services. The PWN for a significant change in placement and a material change in services was signed by the parent on October 21, 2022 included this same information.

Documentation and interviews found that the April 11, 2022 IEP provided by the SEK #637 did not match the PWN provided and consented to by the parent on that same

date. USD #246 acknowledged that the April 11, 2022 IEP was not implemented as intended at the beginning of sixth grade due to this paperwork error.

School staff reported the error in the IEP document was not found until the parent filed this child complaint on October 12, 2022 because none of the staff at NEJHS had any reason to suspect the IEP was incorrect. USD #246 noted that staff were all unfamiliar the student because he had just transferred from the elementary school to NEJHS and the superintendent, building principal, and special education teacher all started employment in USD #246 at the beginning of the 2022-23 school year.

As a result of this situation, Chris Hattabaugh, Principal, reported he has created a chart that compares the NEJHS students' schedules with the services shown in their IEP document and PWN as a means of verifying data received from the SEK #637. Mr. Hattabaugh also reported NEJHS will start a school-wide positive behavior support plan for all students based on the "Viking Virtues" at the beginning of the second semester of the 2022-23 school year.

Ray Streeter, Superintendent, noted that he now visits with staff from SEK #637 on a weekly basis to monitor for any concerns. Mr. Streeter reported the district has 34 students with IEPs in the elementary building; 31 students with IEPs in the middle school building, and 27 students with IEPs in the high school building. He indicated that the district is reviewing its procedures to ensure more efficient and effective transitions between school buildings for these students.

Documentation found that August 17, 2022 was the first day of school for the student in the 2022-23 school year. On August 17, 2022 at 12:20 p.m., Renee Scales, Special Education Teacher, emailed the parent stating,

> I just wanted to reach out and touch base with you about the student's class schedule. I have put him out in the regular education class with para support in all classes to see how he does. If I find that this is not working, we will set up a meeting to see how to proceed.

The parent responded to this email at 12:24 p.m. and asked, "What is the reason for para support? Sene [sic] he is out in regular class room?" Ms. Scales responded back at

12:32 p.m. stating, “Para support is to help him if he is struggling with his work and to help keep him on task.”

The parent reported that she believed that the student would be spending the majority of his day in the special education setting so there would be no need to provide a paraeducator to support services in the regular education setting. However, the parent acknowledged she did not communicate any further with staff in USD #246 about the apparent discrepancy between the services required by the April 11, 2022 IEP and the sixth grade class schedule proposed from the special education teacher.

USD #246 acknowledged that the social work services were not provided during the first three weeks of the school year until September 16 and again on October 2, 2022 due to a staffing issue. Documentation subsequently shows the social work services were not provided to the student on September 23, September 30, and October 21, 2022 due to the student being assigned to either in-school or out-of-school suspensions on these dates. Interviews and documentation found the LEA and the parent discussed the missing social work services and determined a total of 50 minutes of compensatory services to be provided to the student at the IEP team meeting held on October 21, 2022.

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, USD # 246 acknowledged that the special education and social work services in the student’s IEP dated April 11, 2022 IEP were not provided as required at the beginning of the 2022-23 school year. Interviews and documentation found the student did not receive the required 20 minutes per week of social work services prior to the employment of a social worker at NEJHS during the weeks of August 22, August

29, and September 5, 2022. In addition, social work services were not provided prior to IEP team meeting held on October 21, 2022 during the weeks of September 19, September 26, and October 17, 2022. A total of only 40 minutes out of a possible 160 minutes of social work services was provided prior to the October 21, 2022 IEP team meeting. However, the district and the parent did agree to the provision of 50 minutes of compensatory social work services between October 25 and November 28, 2022.

USD #246 also acknowledged that the student only received 85 minutes per day of specialized instruction in the general education setting and a total of 20 minutes per week of specialized in instruction in the special education setting for the first eight weeks of the 2022-23 school year instead of the required 175 minutes per day of specialized instruction in the special education setting between August 17 and October 21, 2022.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to comply with federal regulations at 34 C.F.R. 300. 300.323(c)(2) and state regulations at K.A.R. 91-40-19(a) which require each school district 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 during the 2022-23 school year.

In addition, 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. Kansas 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. A material change in services is defined as a 25% or more change in the amount of any one service and a substantial change of placement is defined as any change that affects 25% or more of the student's school day.

In this case, the April 11, 2022 IEP required behavior consultation services once every ninth week beginning April 11 and ending on May 18, 2022. However, the PWN dated April 11, 2022 does not mention the deletion of these services from the student's IEP

beginning in the sixth grade on August 18, 2022. This proposed alteration to the IEP resulted in a 100% change in services for the student.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to comply with federal regulations at 34 C.F.R. 300.503(a) and state regulations at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services during the past 12 months.

ISSUE TWO: The USD #246 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically the behavior intervention plan (BIP), during the 2022-23 school year.

Positions of the Parties

The parent stated in her original complaint form, "I am concerned that my child's IEP is not being done and followed. We have met and I've made requests for things to be changed and updated and followed. He is still having tremendous troubles so I know they're not doing what I asked and was agreed to."

The parent clarified this concern during an interview on October 18, 2022 and indicated her concern was that the student's behavior intervention plan was not being followed by the new principal and new classroom teachers. She reported that the student had been suspended both in-school and out-of-school multiple times already this school year.

USD #246 denied the parent's allegation and reported that all staff working with the student at NEJHS were provided a copy of the student's "IEP at a Glance" prior to the first day of day of school for the 2022-23 school year. The BIP was further clarified with staff through emails from the special education teacher and principal during the first quarter. School staff reported that the BIP requires staff to use a step-by-step system of "re-direct, re-direct, take a break". The Discipline Log in the district's student information system is used to document the effectiveness of the BIP. School staff also indicated that the BIP was updated at the October 21, 2022 IEP team meeting to include strategies for successfully transitioning between classes at parent 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 #246.

The findings of Issue One are incorporated herein by reference.

Every school staff interviewed consistently reported that the steps in the student's BIP were followed by all staff as the way to respond to inappropriate behavior in the classroom. The steps were to 1) re-direct, step away for 5 minutes 2) re-direct and step away for 5 minutes 3) give the student a brain break to walk around in order to re-focus and 4) Remove from class if student becomes disruptive.

Notes of the August 29, 2022 meeting between the parent, the principal and the special education teacher state the purpose of the meeting was "to make sure we are following the student's behavior intervention plan." The notes indicate that the special education teacher and the principal wanted to be "crystal clear in expectations".

USD #246 provided copies of multiple emails dated August 30 through September 13, 2022 documenting questions and clarifications steps in the student's BIP. These emails were between the special education teacher, Ms. Scales; the three general education teachers, Ms. O'Rand, Ms. Parsons, and Ms. Hribar; and the athletic director/coach, Kevin Wicker.

The April 11, 2022 IEP indicated that the student's behavior impedes his learning and the learning of others. This IEP included two reading goals and one goal related to behavior as well as a BIP and the functional behavioral assessment (FBA) completed when the student initially qualified for special education services in the third grade.

The student's goal states, "In one IEP year, when the student is presented with a situation which upsets him, he will practice safe and respectful prosocial skills 100% of the time during a two week period."

The present level of functional and academic performance (PLFAAP) states,

> The student easily responds after he has calmed down. The team had identified it is not a skill he cannot do, rather managing his anger and frustration. It has been determined Social Skills Instruction is not necessary at this time as the student knows the skill, he just doesn't apply it until he is calm . . .The team has increased the student's resource time to include math and science and social studies due to the amount of negative behavioral outbursts. The team will be monitoring the student's progress in that setting to earn back more time in the general education setting. When the parent expressed concern about being away from peers and wanting to reinitiate peers, the data didn't encourage re-integration at the time.

The BIP states,

> When the student's behaviors increased before Christmas 2021, the principal called a team meeting early in January 2022 to discuss restricting the student's placement based on inability to stay in the general education setting. The student was angry, telling staff "No", cussing, throwing materials, running out of class, and unable to calm down as exhibited successfully prior. Mom agreed to pull the student in to the resource room as an intervention knowing his IEP was coming up shortly and we would discuss progress at that meeting if we were to continue or not . . . Meeting 4/11/22: the team discussed progress as identified through data collection of daily point sheets . . . 3rd Quarter: Goal met. Placement appropriate. The team assumes if put around grade level peers at this time he may be able to handle it. The team will continue to monitor . . . 4th quarter: Goal on track to be met. Even though data sheets show the placement is appropriate, it is a concern for both mom and school staff that the student is away from non-identified peers for 43% of his school day with a para to two students. This is the most intense behavioral intervention in the general education setting.

The BIP then states,

> The team has agreed to: a) continue placement as status quo b) discussion of a more restrictive environment c) discussion of a plan of reintegration d) when the student exhibits the following behaviors he will be suspended e) when the student exhibits the following behaviors, he will be in-school suspension f) when the student exhibits the following behaviors he will be removed to the resource room short term g) when the student exhibits the following 2 behaviors he will earn back the inclusionary setting h) the team will review as designated by the school calendar (end of first quarter 2022 as a 6th grader) and decide if placement is still appropriate.

USD #246 acknowledged that the student's placement was not "status quo" as described in the April 11, 2022 IEP due to a clerical error which caused school staff to mistakenly change the student's placement in the special education setting from the original 43% of the school day in the special education setting to all general education classes with daily paraeducator support and 20 minutes per week of special education support in the special education setting.

USD #246 also acknowledged that the no data sheet or data charts were used to monitor the student's behavior during the first quarter of the 2022-23 school year. No documentation was provided to demonstrate the sixth grade team discussed and determined the specific behaviors that would lead to suspension, in-school suspension, removal to the resource room, or earning back the inclusionary setting as outlined in the BIP.

The October 21, 2022 IEP also indicates that the student's behavior impedes his learning and the learning of others. This IEP includes one reading goal, one math goal, and one goal related to behavior as well as a BIP. The student's goal states, "Beginning 10/24/22, and for the duration of the current IEP, the student will demonstrate appropriate social behaviors by recognizing and expressing feelings to both peers and adults in an appropriate manner, with no more than 1 report of an inappropriate behavior each week." The baseline for this goal reflects the student currently displaying inappropriate behavior on a daily basis.

The BIP included in the October 11, 2022 IEP identifies disrespect and refusal and the problem behaviors to be addressed. The "re-direct, re-direct, take a break" steps are included in the step-by-step plan for addressing minor behaviors and ultimately removal from the classroom for major behaviors. The BIP then describes specific behaviors that are considered minor and those that are considered major; includes a plan for positive reinforcement for appropriate behavior; a plan for preventing behavior in the classroom and hallway settings, and a system for collecting data.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.324(a)(2)(i) require school districts to consider the use of positive behavioral intervention and supports, and other strategies to address any behavior that impedes the child's learning or the learning of others. The IDEA does not specify any requirements for what must be included in a BIP; however, if a BIP is developed, it must be part of the student's IEP.

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 student's IEP in effect at the beginning of the 2022-23 school year was dated April 11, 2022 and included a description of behavioral concerns in the PLFAAP, an IEP goal to address the behavioral concerns, and a BIP that called for a "status quo" placement of 43% of the school day spent in the special education setting as well as a list of items that the IEP team had agreed to:

a) continue placement as status quo
b) discussion of a more restrictive environment
c) discussion of a plan of reintegration
d) when the student exhibits the following behaviors he will be suspended
e) when the student exhibits the following behaviors, he will be in-school suspension

f) when the student exhibits the following behaviors he will be removed to the resource room short term
g) when the student exhibits the following behaviors he will earn back the inclusionary setting
h) the team will review as designated by the school calendar (end of first quarter 2022 as a 6th grader) and decide if placement is still appropriate.

USD #246 provided no documentation showing any of the items on the list included in the BIP were ever discussed or determined.

It is noted that school staff met with the parent on August 29, 2022 to review the student's behavior intervention plan so that everyone was "crystal clear" on the expectations. However, It is unclear if the entire copy of the April 11, 2022 IEP was ever reviewed by school staff because the BIP specifically addresses the percentage of time in the special education setting and the PLAAFP states "When the parent expressed concern about being away from peers and wanting to reinitiate peers, the data didn't encourage re-integration at the time." Even with the clerical error on the services summary of the IEP, had the entire IEP been reviewed, school staff would have been on notice that the PLAAFP, BIP, and services summary were not aligned and further investigation and clarification was needed in order to determine a free appropriate public education (FAPE) for this student.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to comply with federal regulations at 34 C.F.R. 300. 300.323(c)(2) and state regulations at K.A.R. 91-40-19(a) which require each school district to ensure that as soon as possible following the development of the IEP, special education and related services, including the BIP, are made available to the child in accordance with the child's IEP during the 2022-23 school year.

ISSUE THREE: The USD #246, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures during the 2022-23 school year.

Positions of the Parties

The parent reported USD #246 has not implemented the student's IEP or the BIP since the beginning of the 2022-23 school year which has resulted in a significant increase in inappropriate behavior and multiple in-school (ISS) and out-of-school (OSS) suspensions. The parent believes the school staff are targeting him because they do not want to deal with his behaviors and would prefer to just "kick him out of school."

According to school records, USD #246 reported the student has not been suspended from school ten consecutive school days or a total of ten school days cumulatively with a pattern. The school believes no special disciplinary procedures were required by the IDEA at that point in time.

However, as a result of conducting an informal internal review of policies, procedures, and practices related to discipline of students with disabilities, USD #246 indicated staff will now keep written documentation of the implementation of the IEP during any assigned ISS. In addition, the SEK #637 will train all key district decision makers on Chapter 13, Suspension and Expulsion of Children with Disabilities for Disciplinary Violations, from the Kansas State Department of Education Special Education Process Handbook.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #246

The findings of Issues One and Two are incorporated herein by reference.

Documentation and interviews found that the student began exhibiting inappropriate behavior in the school setting on August 17, 2022. The student's class schedule was changed on August 25, August 29, September 13, October 3, and October 24, 2022 in an effort to avoid "personality clashes" with teachers and other students and to provide more support in the special education setting.

According to school records and the discipline log, the student was assigned ISS on September 23, September 25, October 6, October 12, October 13, and October 14, 2022. The student was assigned OSS on September 29 and September 30, 2022.

District staff reported the student did not receive any special education services while in ISS and, therefore, those days would count as a full days of OSS for the purposes of determining if any special procedures were required under the IDEA.

On October 20, 2022, the parent, superintendent, and principal met to discuss concerns with the most recent disciplinary incident. The parent reportedly stated that the student would not go to ISS or he will not be in OSS because the issues resulting in disciplinary action were the school's fault.

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 school-days consecutively or up to 10 school-days cumulatively with a pattern of behavior 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, the student has only been assigned ISS and OSS for a total of eight days during the 2022-23 school year. For this reason, there is no reason for the district follow any special procedures related to discipline of students with disabilities at this time.

The evidence presented supports the finding that USD #246 has followed appropriate disciplinary procedures required by the IDEA at this point in time. Based on the foregoing, a violation of special education statutes and regulations is not substantiated.

ISSUE FOUR: The USD #246 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to appropriately respond to the parent's request for the student to transition between classes at a different time than peers during the 2022-23 school year.

Positions of the Parties

The parent reported that the school did not include her request for the student to be supervised during class transitions in the hallway in the IEP even though she met with the building principal and the superintendent several times during the first quarter of the 2022-23 school year.

The school district reported,

> USD #246 administration, in an attempt to resolve parental concerns for a variety of issues, including concerns outside of the scope of the IEP, met with the parent and communicated with the parent a number of times. There may have been times where administration was attempting to solve concerns by addressing them as they for any student and did not believe it was directly related to the student's special education plan. In regards to transition between classes, USD 246 administration were operating off what they would do for any student and agreed to provide supervision between classes using school-wide supports available for all students. They did not believe this was an IEP issue as it is an accommodation they would do for any student.
>
> On 10/21/22, the team developed a specific plan for transitioning between classes, beyond what was previously provided as USD 246 would do for all students, and is now part of the IEP as an accommodation as well as a preventative measure in the BIP. As there may be some confusion between what requests are available as accommodations for all students as part of school-wide supports, and what are IEP specific requests related to his disability, we have appointed two main points of contact for the parent. When she has a request related to the IEP, it shall be directed to the special education teacher, and all other requests will be directed to the building principal. This strategy is to ensure requests can be appropriately responded to as required.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #246.

The findings of Issues One, Two, and Three are incorporated herein by reference.

Documentation shows that a re-entrance meeting between the principal and the parent was held on September 30, 2022 following an out-of-school suspension. During this meeting, the parent requested that the student have supervision during transition time. The principal arranged for a classroom paraeducator to accompany the student in the hallways during each transition time.

On October 4, 2022, the parent, superintendent, and Chris Ratzlaff, the SEK #637 representative, met to discuss the student's behavior. School staff indicated that the student was not being cooperative with the paraeducators during transition periods and often refused to wait, argued with staff, and was disrespectful. An IEP team meeting was scheduled for October 19, 2022 to discuss the ongoing behavioral concerns.

Notes from the IEP team meeting held on October 19, 2022 and concluded on October 21, 2022 state,

> Team discussed parent request regarding transitions between classes. Currently, school staff were attempting to transition with the student but he would run from staff and take off in the hallway. Team determined the best option is for the student to be prompted to leave the classroom 2 minutes early and will sit in the front office in order to avoid any issues during the transition process. Once all kids are out of the hallway, the student will go to his classroom on his own.

The meeting was continued until October 21, 2022 at which time the IEP team determined the best placement for the student was in the special education setting for all core classes with continued participation in Fitness, PE and Lunch. School staff provided the parent with a PWN and the parent gave written consent for the material change of services and a significant change of placement.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.322(a) require school districts to ensure that parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate.

In this case, the parent met with USD #246 administration regarding her request for supervised transition between classes on September 30, October 4, and October 19 and October 21, 2022. During the first meeting, the principal made arrangements for the classroom paraeducators to accompany the student in the hallways between classes. During the second meeting on October 4, 2022 school staff reported that the plan was not successful as the student refused to cooperate with the school staff. An IEP team meeting was scheduled for October 19, 2022 to discuss the behavioral concerns. Notes from that IEP team meeting reflect that the IEP team did consider the parent's input regarding transitioning between classes. In addition, the October 21, 2022 IEP includes specific accommodations related to transitioning in the hallway.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for a failure to provide the parent with an opportunity to participate in the IEP team meeting.

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) and state regulations at K.A.R. 91-40-19(a) which require each school district 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, USD #246 failed to implement the services proposed at the April 11, 2022 IEP team meeting and consented to by the parent in the PWN dated April 11, 2022. The student was not provided with a total of

120 minutes per week of social work services during the 2022-23 school year. It is noted that the school district agreed to provide a total of 50 minutes of compensatory social work services at the October 21, 2022 IEP team meeting.

In addition, USD #246 only provided a total of 200 minutes of specialized instruction in the special education setting (20 minutes per week x 10 weeks of school as of October 21, 2022) instead of the 8,050 minutes of specialized instruction in the special education setting (175 minutes per day x 46 school days as of October 21, 2022). There is documentation to support that the student was provided at least 85 minutes per day of specialized instruction in the general education setting between August 17 and October 21, 2022.

Finally, USD #246 failed to implement the BIP included in the April 1, 2022 IEP.

B. Federal regulations at 34 C.F.R. 300.503(a) and state regulations at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services.

In this case, the USD #246 deleted the behavior consultation services for 10 minutes every ninth week beginning on August 18, 2022 without the parent's consent. Deleting this service resulted in a 100% reduction in the amount of services the student receives.

Based on the foregoing, USD #246 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #246 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) and state regulations at K.A.R. 91-40-19(a) which require each school district to ensure that as soon as possible following the development of the IEP, special education and related services, including the BIP, are made available to the child in accordance with the child's IEP.

b. Comply with federal regulations at 34 C.F.R. 300.503(a) and state regulations at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services.

2. No later than November 30, 2022, USD #246 shall make a written offer of compensatory services to the parent for providing not less than 134 hours of compensatory special education services in the special education setting and not less than 70 minutes of social work 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 2023-24 school year. USD #246 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 parent 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 parent, USD #246 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 #246 shall notify the parents and SETS when the compensatory services have been completed.

3. No later than December 30, 2022, USD #246 shall review the most recent IEPs and PWNs of all children with disabilities enrolled in NEJHS and compare the services required by the IEP with any change in services being proposed in the most recent PWN. If any discrepancies are found between any proposed changes in services in the most recent IEP and PWN, USD #246 shall repeat the process described in the previous corrective action for each identified student.

4. No later than January 15, 2023, USD #246 will arrange for TASN to conduct a training for all licensed and certificated special education staff in USD #246 as well as all special education staff at SEK #637working with USD #246 regarding the IDEA requirements related to when and how to provide appropriate PWN to parents. No later than January 30, 2023, USD #246 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 #246 will provide SETS with any handouts and/or a copy of the presentation.

5. It is noted that IEP team, with the parent in attendance, met on October 21, 2022 to review and revise the April 11, 2022 IEP. This most recent IEP includes special education services in the special education setting for the majority of the school day and an updated BIP which includes a data collection system to monitor progress. For these reasons, no individual corrective action is ordered to address the noncompliance related to the implementation of the BIP.

6. 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 #229
ON OCTOBER 24, 2022

DATE OF REPORT NOVEMBER 23, 2022

This report is in response to a complaint filed with our office on behalf of the student by his father, The parent. In the remainder of the report, the student will be referred to as "the student" and The parent will be referred to as "the father" or "the parent".

The complaint is against USD #229 (Blue Valley Public Schools). In the remainder of the report, "USD #229," the "school," the "district" or the "local education agency (LEA)" shall refer to this agency responsible for complying with the Individuals with Disabilities Education Act (IDEA).

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 USD #229 received the complaint on October 24, 2022.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on October 25, 2022. The father provided additional information in interviews on October 28, 2022 and again on November 17, 2022.

USD #229 made the following school staff available for phone interviews on November 10, 2022:

- Mark Schmidt, Assistant Superintendent of Special Education
- Kristin Venable, Principal
- Cindy Ray, Special Education Case Manager
- Carol Lujano, School Psychologist
- Sammy Lovgren-Uribe, 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:

- Evaluation Report dated October 6, 2017
- Individualized Education Program (IEP) dated October 6, 2017
- IEP dated April 16, 2020
- Reevaluation Not Necessary Agreement dated September 14, 2020
- IEP dated April 7, 2021
- IEP Goal Progress Report Summary for the April 7, 2021 IEP
- IEP dated March 24, 2022
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent for a parent observation of a speech/language therapy session dated March 30, 2022
- PWN agreeing to an Independent Educational Evaluation (IEE) at public expense dated April 5, 2022
- Speech/Language Assessment completed by Suzanne Green Johnston, M.A. SLP, dated April 30, 2022
- PWN dated May 19, 2022 refusing the parents request to add an additional 60 minutes of speech therapy to the student's IEP
- PWN dated May 20, 2022 refusing the parent's request to provide a paraprofessional during speech therapy sessions, to increase his therapy sessions from one time per week to three times per week; and to have an outside provider collect baseline data
- Email dated May 20, 2022 at 10:47 a.m. written by the parent to school staff including Mark Schmidt, Assistant Superintendent of Special Education
- Email dated May 20, 2022 at 5:20 p.m. written by Mr. Schmidt to the parent
- PWN dated May 24, 2022 proposing to update baseline data in the IEP and to increase speech therapy services by 10 minutes from one time per week for 30 minutes to two times per week for 20 minutes.
- IEP Goal Progress Report Summary for the March 24, 2022 IEP
- Email dated October 11, 2022 written by Cindy Ray, Special Education Case Manager to the parent regarding reevaluation
- PWN dated October 12, 2022 requesting consent to conduct a reevaluation for the student.
- Emails between the father and Ms. Ray, on October 12, 2022 at 9:24 a.m., 11:39 a.m., 11:46 a.m., and 11:48 a.m.
- Emails between the father and Mr. Schmdt, on October 12, 2022 at 11:58 a.m., 12:22 p.m., 3:07 p.m., 3:23 p.m., and 5:15 p.m.

- Email written by the father to Mr. Schmidt on October 17, 2022 at 6:25 a.m.
- Email between the father and Lauren Gore, Special Education Administrator, on October 17, 2022 at 9:14 a.m., 9:43 a.m., 10:01 a.m., 10:05 a.m., 10:26 a.m., 10:30 a.m., 10:44 a.m., 11:00 a.m., and 11:07 a.m.
- Formal Complaint Request form dated October 21, 2022 written by the father
- Response to the allegations dated November 4, 2022 written by Melissa Hillman, Chief Legal Officer for USD #229

Background Information

This investigation involves an eight-year-old male student currently enrolled in the second grade at Indian Valley Elementary School (IVE) in USD #229. The student was initially found eligible for special education and related services at the age of three under the exceptionality category of Developmental Delay on October 6, 2017 while attending preschool at Oak Hill Elementary School in USD #229. His initial IEP provided specialized instruction, occupational therapy (OT), speech therapy, and language therapy. He transitioned to kindergarten at IVE in August 2020 and continued to receive specialized instruction, OT, speech therapy, and language therapy. USD #229 has continued to make these same special education and related services available to the student through the current date.

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 #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to conduct a reevaluation of the student and consider the independent educational evaluation provided by the parent during the past 12 months.

Positions of the Parties

The parent reported that the school district originally evaluated the student at the age of three when the student attended preschool at Oak Hill Elementary School. The

district has not conducted a reevaluation since that date. The parent is concerned that the student will no longer be eligible for special education and related services when he turns nine years old at the beginning of third grade because he will be too old to be eligible for special education under the current exceptionality category of Developmental Delay.

USD #229 reported the student was initially evaluated on October 6, 2017 at the age of three. On September 14, 2020, the parent and the district agreed that the student continued to be eligible under the exceptionality category of Developmental Delay and continued to need special education services and that no triennial evaluation was necessary as the student transitioned into kindergarten.

The district stated:

> However, the parent began expressing concern about the student's IEP and the services he is receiving under the IEP. In addition, the student is nearing age 9 and will soon lose eligibility for special education unless another qualifying exceptionality is identified. For these reasons, the IVE [Indian Valley Elementary School] team asked for parent consent to reevaluate the student early.

The district scheduled an IEP team meeting for October 27, 2022 to discuss the reevaluation process. The parent was provided with Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent for a reevaluation to review prior to that scheduled meeting. Subsequently, the parent emailed staff on multiple occasions and refused to provide consent for any reevaluation of the student. The father also refused to attend this meeting if Kristin Venable, Principal at IVE, would be in attendance. No meeting was held prior to the parent and student leaving the country for an extended absence from November 1, 2022 through mid-December 2022.

The district stated:

> It is perplexing that, in light of the parent's adamant objections to reevaluation, he now seeks redress for Blue Valley's alleged failure to conduct a timely reevaluation. Blue Valley will continue to work with the parent to obtain his consent for reevaluation after he returns from his extended travel.

The parent also reported that he obtained an Independent Educational Evaluation (IEE) of the student on April 30, 2022 and provided a copy of the resulting report to the school district. However, the district failed to revise the student's IEP to include the report's recommendation to add 60 minutes per week of speech therapy.

The LEA acknowledged that the parent requested an IEE following the March 24, 2022 IEP team meeting. A PWN agreeing to the IEE at public expense and information for obtaining the IEE was provided to the parent on April 5, 2022. School staff indicated the parent obtained the IEE on April 30, 2022 and subsequently shared the report with the district. The district considered the IEE at a meeting on May 12, 2022. The parent and Mr. Schmidt agreed to amend the student's IEP to add 10 minutes per week of speech therapy to the student's IEP on May 20, 2020. USD #229 provided the parent with PWN for this change on May 24, 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 #229.

The student was initially evaluated and found eligible for special education and related services under the exceptionality category of Developmental Delay on October 6, 2017.

The parent signed a document titled "Reevaluation Not Necessary Agreement" on September 20, 2020. This document indicates the agreement was made between the parent and Alyssa Pengra, School Psychologist, and that a copy of the agreement was hand delivered to the parent on that same date.

The student's annual IEP was reviewed and revised at an IEP team meeting held on March 24, 2022 with the parent in attendance. During that meeting, the parent shared concerns about the special education and related services the student was receiving. The parent requested to observe the student during one of the speech therapy sessions and the parent was provided with PWN dated March 30, 2022 proposing that such an observation occur.

The parent then contacted the district on March 25, 2022 and made the following requests: 1) Assign a paraprofessional to work with the student during his speech services to keep him engaged during the session; 2) Increase the student's speech language services from one time per week to three times per week; and 3) Have an outside service provider collect IEP data for the baseline of the student's IEP goals due to a concern about inconsistent data points in the baseline. The parent then requested an IEE at public expense and USD #229 responded on

April 5, 2022 agreeing to pay for the IEE. The parent was subsequently provided with documentation outlining the IEE process and potential providers.

The IEE was completed on April 30, 2022 by Suzanne Green Johnston, M.A. SLP. The report recommended 60 minutes per week of speech therapy to address "his tongue thrust along with his articulation errors that contribute to the incorrect tongue movements."

The parent provided school staff with a copy of the IEE report at a meeting on May 12, 2022. While USD #229 did not provide a copy of the notification for this meeting, the meeting was confirmed in an email written by the parent on May 20, 2022.

School staff reported they reviewed the IEE and considered the recommendations in the report at the May 12, 2022 meeting. Several options to increase speech services were discussed but the parent only wanted the LEA to provide the full 60 minutes of speech therapy services recommended by the IEE.

As a result of the May 12, 2022 meeting, the parent was provided with a PWN dated May 19, 2022 refusing the parent's request to add an additional 60 minutes of speech therapy to the student's IEP as recommended in the IEE. The parent was also provided with a PWN dated May 20, 2022 refusing the parent's request to provide a paraprofessional during speech therapy sessions, to increase his therapy sessions from one time per week to three times per week; and to have an outside provider collect baseline data.

The parent did not agree with the actions described in the PWNs and shared his concerns in an email dated May 20, 2022. Mr. Schmidt reported that he called and spoke to the parent that same date to discuss the parent's concerns and the IEE. Mr. Schmidt indicated that he and the father agreed to amend the student's IEP to include two 20-minute speech therapy sessions per week instead of only one 30-minute therapy session as was previously discussed and offered by the school team.

Mr. Schmidt sent an email outlining the discussion and decisions to the school team on May 20, 2022 stating:

> I had a chance to visit with the parent on Friday afternoon. After some discussion, the parent would like to accept the previously offered SLP [speech language pathology] services of 2 x per week for 20 minutes each time. The parent understands that these services will begin next school year. We agreed that the school would continue to monitor his progress on the IEP goals. If the student is not meeting his IEP goals at progress report time, the team will consider any changes necessary to make

> progress. We also agreed that speech services would be scheduled so the student did not miss any recess time.

USD #229 provided the parent with PWN dated May 24, 2022 proposing to update baseline data in the IEP and to increase speech therapy services by 10 minutes from one time per week for 30 minutes to two times per week for 20 minutes.

Ms. Ray sent the parent an email on October 11, 2022 advising him of a meeting on October 27, 2022 which would include a goal/progress update. This email also stated:

> Since the student is due for his three year reevaluation, we will also explain the reevaluation process. You will have an opportunity to ask questions during the meeting. I have attached a meeting notice, agenda, and the permission to reevaluate so you have time to read them before the meeting. You do not need to sign anything until we have the meeting and you have an opportunity to hear the explanation and to ask questions. I will send home paper copies of the meeting notice, agenda, and permission to reevaluate with the student.

The parent was provided with a PWN dated October 12, 2022 requesting consent to conduct a reevaluation for the student in the following areas: health/motor, general intelligence, academic performance, and communicative status. The purpose of the proposed reevaluation is "to determine the student's continued eligibility for special education and related services: The proposed reevaluation was based "on a review of educational records, teacher report, progress monitoring data, observations, and parent input."

The parent responded to the PWN for reevaluation on October 12, 2022 at 9:24 a.m. in an email to Ms. Ray stating, "I will not accept the reevaluation as I said in the last meeting." The parent also refused to attend any meeting with Ms. Venable in attendance. At 11:46 a.m., the father sent another email stating, "Regardless of who is going or not, I will not sign a revaluation. So please focus on the progress not in the reevaluation."

At 11:58 a.m., the father sent an email to Mark Schmidt, Assistant Superintendent of Special Education, stating, "Please focus on just the EIP (sic) progress, I'm not going to sign any permission for revaluation and don't insist."

Mr. Schmidt replied to the father in an email at 3:07 p.m. on October 12, 2022 stating:

I'm just reading through the emails below and I need to provide some information that may help in this situation. The federal Individuals with Disabilities Education Act (IDEA) requires schools to reevaluate kids with IEPs at least once every three years. The purpose of the triennial reevaluation is to see if a student's needs have changed and what specific services are needed to meet those needs. It's also to see if they still qualify for special education services. Mrs. Ray is simply doing what the law requires by letting you know that the student is due for this re-evaluation under this law.

In addition, when your son was originally identified for special education, his primary disability was listed as "Developmental Delay (ages 3 - 9)." Under federal law, students are not eligible for special education services with a "Developmental Delay" after their 9th birthday. The re-evaluation would be used to determine which, if any, exceptionality your son qualifies for special education. We would like to use the results of the re-evaluation to inform services for the IEP.

As Mrs. Ray noted, you would need to consent to the re-evaluation for the school to conduct a re-evaluation. While this information would be helpful, as the parent, you can decline to consent to the re-evaluation. That is your right! On the other hand, presenting this opportunity to you formally is a requirement under the law. You, as the parent, may refuse to consent. The form has a place for you to sign your refusal to assert your right.

Mrs. Venable will also be part of the IEP meeting as the building principal and a required member of the team and part of these discussions.

The parent replied to Mr. Schmidt's email on October 17, 2022 at 6:25 a.m. stating, "As I stated, I'm not going to accept to be in the meeting with Mrs. Venable. It's your responsibility to assign someone that will be covering the stakeholder (that's your choice)."

The parent reported that he requested that another school staff be assigned to take Ms. Venable's role in the IEP team meeting on multiple occasions. He further stated that he will refuse to attend any meeting where Ms. Venable is present.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.303(b) require school districts to conduct a reevaluation of a child with a disability at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

In this case, the student was initially evaluated and found eligible for special education and related services on October 6, 2017. A triennial reevaluation was required to be completed prior to October 5, 2020. Documentation and interviews show that the parent agreed with school staff on September 14, 2020 that a triennial evaluation was not necessary when the student transferred into kindergarten. The next triennial reevaluation is not required to be completed until September 13, 2023.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to conduct a reevaluation of the student at least once every three years because documentation found the parent and public agency agreed that the first triennial review was not necessary on September 14, 2020 and the next required triennial review is not due until September 13, 2023.

Federal regulations at 34 C.F.R. 300.303(a) allow reevaluation to be conducted more frequently than once every third year so long as the parent and the LEA are in agreement. In addition, federal regulations at 34 C.F.R. 300.8(b) and K.A.R. 91-40-1(k)(2) do not state that student must be younger than nine years of age to be eligible for special education and related services under the exceptionality category of Developmental Delay. Rather, these regulations state that a child may remain eligible under the category of Developmental Delay from ages "three through nine." Accordingly, a child may remain eligible under Developmental Delay through age nine, not until age nine. Age nine ends on the tenth birthday. It is on the tenth birthday that eligibility under the category of Developmental Delay must end.

In this case, the student will turn ten years of age on October 13, 2024 and USD #229 mistakenly concluded that the student would no longer be eligible under the current identified exceptionality category of Developmental Delay. Interviews and documentation show USD #229 determined that an earlier reevaluation was necessary due to the parent concerns expressed in March 2022 and the need to determine if the

student continued to be a student with a disability under another exceptionality category included in the IDEA and defined in Kansas statutes and regulations prior to aging out of the Developmental Delay category upon his next birthday (both parties have misinterpreted this timeline). The district attempted to schedule an IEP team meeting on October 27, 2022 to review and discuss the reevaluation process and obtain consent from the parent.

Based on the foregoing, a violation of special education statutes and regulation is not substantiated for conducting a reevaluation less often than the minimum of at least once every three-years.

As part of a reevaluation, 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. Federal regulations at 34 C.F.R. 300.305(b) allow this review of existing data to be conducted with a meeting or through the IEP team conferring with each other.

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, USD #229 sent an email to the parent on October 11, 2022 providing the parent with "a meeting notice, agenda, and a PWN for reevaluation". This email clearly stated that the reevaluation process would be explained and discussed and that the parent would have the opportunity to ask questions at the October 27, 2022 IEP team meeting. The email also expressly stated that the parent did not need to sign anything until after the meeting.

However, the attached PWN proposing a reevaluation with additional assessment was dated October 12, 2022 but the IEP team meeting to discuss the reevaluation was not scheduled until October 27, 2022. This mismatch in dates proved confusing to the parent and resulted in miscommunication and misunderstanding.

Subsequent emails between the father and multiple school staff document that the father interpreted the PWN dated prior to the IEP team meeting as the district's proposal to conduct a reevaluation with additional assessment and a request for his consent. The father responded by clearly stating he was refusing to provide consent for any reevaluation of the student and further complicated the situation by refusing to meet with IEP team so long as the building principal was part of the team.

Regardless of the confusion caused by the PWN being dated prior to the scheduled IEP team meeting, the October 11, 2022 email shows USD #229 intended to give the parent the opportunity to participate in an IEP team meeting to discuss the reevaluation process, including the review of existing data. The email clearly stated that the parent did not need to sign anything until after the meeting.

At this point, the father is out of the country and unavailable to attend an IEP team meeting to discuss the reevaluation of the student but the due date of the required triennial evaluation has not yet passed.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to obtain input from the parent 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. 300.502(c) require school districts to consider the results of an independent educational evaluation shared with the school district in any decision made with respect to the provision of a free appropriate public education (FAPE) to the student. In addition, federal regulations at 34 C.F.R. 300.501(b) require parents to be afforded the

opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

According to federal regulations at 34 C.F.R. 300.324(a)(4), in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

In this case, interviews and documentation show that the parent provided a copy of the IEE to USD #229 and participated in a meeting to review the report on May 12, 2022. As a result of that meeting, USD #229 provided the parent with a PWN dated May 19, 2022 refusing the parent's request to add an additional 60 minutes of speech therapy to the student's IEP as recommended in the IEE. The parent and Mr. Schmidt held a phone conference on May 20, 2022 and agreed to amend the student's IEP to add an additional 10 minutes per week of speech therapy and USD #229 provided the parent with a PWN proposing this change on May 24, 2022.

It is noted that while USD #229 did not agree with the recommendations of the IEE, it was obviously considered at both at the May 12, 2022 meeting with the school staff and again considered at the May 20, 2022 meeting with Mr. Schmidt. Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to include the parent in the consideration of the results of the IEE conducted on April 30, 2022 in regards to the provision of FAPE to the student.

> ISSUE TWO: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP as appropriate during the past 12 months when the student failed to make progress towards the IEP goals.

Positions of the Parties

The parent stated that despite the special education services provided by USD #229, the student is still delayed as compared to his peers. The IEP goal progress reports show the student is making progress, but observations at home show he still struggles

to decode words (e.g. he reads "here" for "there"). The father is very concerned that the student will be bullied because of his reading difficulties.

The father also worried because the district told him the student would no longer be eligible for special education and related services when he turns age nine in third grade even though the IEP has failed to catch the student up with his peers. The parent believes USD #229 should have added additional services to the student's IEP at IEP team meetings as recommended by the independent educational evaluation (IEE).

USD #229 reports the student has made progress towards his IEP goals each quarter for the past 12 months. In addition, the parent has never requested to reconvene the IEP team to discuss any lack of progress.

USD #229 acknowledged that the parent shared concerns regarding speech services at the March 24, 2022 annual IEP team meeting and requested to observe a therapy session. This request was granted and, when the parent subsequently requested an IEE, the district also granted that request. USD #229 believes they have responded appropriately to concerns shared by the parent 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 #229.

The findings of Issue One are incorporated herein by reference.

IEP goal progress reports for the past 12 months show the student is making adequate progress to meet his IEP goals in both the April 7, 2021 and March 24, 2022 IEPs.

No evidence was provided showing the parent ever requested an IEP team meeting to discuss concerns related to IEP goal progress.

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.

In this case, the student's IEP team was reconvened on March 24 to review and revise, as appropriate, the annual IEP. The IEP goal progress reports indicated the student was making adequate progress towards his IEP goals so there was no requirement for USD #229 to reconvene the IEP team more frequently. Based on the foregoing, no violation of special education statutes and regulations is substantiated for failing to reconvene the IEP team because the student was not making adequate progress towards achieving the IEP goals during the past 12 months.

In addition, documentation and interviews show that USD #229 responded to the parent's concerns related to speech therapy services by granting the parent request to observe a therapy session as well as granted the parent's request for an IEE. Based on the foregoing, no violation of special education statutes and regulations is substantiated for failing to reconvene the IEP team to consider the concerns of the parent during the past 12 months.

Federal regulations at 34 C.F.R. 300.502(c) require school districts to consider the results of an independent educational evaluation shared with the school district in any decision made with respect to the provision of a free appropriate public education (FAPE) to the student. As noted in Issue One, the report resulting from the IEE was considered by the parent and school staff on May 12, 2022 and was reconsidered in the phone conference with Mr. Schmidt on May 20, 2022. Subsequently, a PWN proposing to add 10 minutes of speech therapy services was provided to the parent on May 24, 2022. Based on the foregoing, no violation of special education statutes and regulations is substantiated for failing to consider the IEE in regards to the provision of FAPE.

Federal regulations at C.F.R. 300.8(b) and K.A.R. 91-40-1 state that a student must be younger than ten years of age to be eligible for special education and related services under the exceptionality category of Developmental Delay. In this case, the student will turn nine years of age on October 13, 2023 and will remain eligible under the current identified exceptionality category of Developmental Delay.

Interviews and documentation show USD #229 decided that an earlier reevaluation was necessary due to the need to determine if the student continued to be a student

with a disability under another exceptionality category included in the IDEA and defined in Kansas statutes and regulations when the district mistakenly believed the student would age out of the Developmental Delay category upon his next birthday. The district attempted to schedule an IEP team meeting on October 27, 2022 to review and discuss the reevaluation process and obtain consent from the parent. However, the parent refused to attend the scheduled IEP team meeting and refuses to provide consent for a reevaluation or meet with the IEP team again so long as Ms. Venable is a member of the IEP team.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to comply with federal regulations at 34 C.F.R. 300.324(b)(1) as well as federal regulations at 34 C.F.R. 300.8(b) and K.A.R. 91-40-1state regulations at K.A.R. 91-40-19(a) regarding when the IEP team must reconvene to determine eligibility for the exceptionality category of Developmental Delay.

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. 229,
Blue Valley Public Schools: 23FC229-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on October 24, 2023, by Parent on behalf of his child, Student. In the remainder of this decision, The parent will be referred to as "the parent," and The student 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 parent's allegation, was issued on November 23, 2023. That Complaint Report concluded that there were no violations 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 appeal and supporting documents, 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.

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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

ISSUES ON APPEAL

There are two issues on appeal:

> ISSUE 1: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to conduct a reevaluation of the student and consider the independent educational evaluation provided by the parent during the past 12 months.

There are two parts to Issue 1. Issue 1 alleges that the district:

(a) failed to follow appropriate procedures to conduct a reevaluation; and
(b) failed to consider the IEE provided by the parents

Part (a) of Issue 1

Regarding (a), the allegation that the district did not follow appropriate procedures to conduct a reevaluation of the student, the parent's appeal does not say how the district failed to follow appropriate procedures.

The relevant facts, as recorded in the decision, are as follows:

The child was identified as a child with a disability on October 6, 2017 (Report, p. 5). Accordingly, a reevaluation was due by October 5, 2020.

The parent signed a document titled "Revaluation Not Necessary Agreement on September 14, 2020 (See Exhibit 5b). The report said the parent signed this document on September 20, 2020, and the parent was appealing that statement.

Because the parties agreed that a reevaluation was not needed, a reevaluation was not conducted (Report, p. 6).

In his appeal, the parent says: "I (parent) , did not sign any document…" In his appeal, the parent attaches Exhibit 1a, the Reevaluation Not Necessary Agreement, without a signature. Mark Ward spoke with this parent on the phone on 12/8/22 and the parent stated that he had signed the agreement, and what he was contesting was the statement in the report, on page 6, that he had signed the document on September 20, 2020. He is correct. That is not the date he signed the document. That was an error in the report, but it does not alter the fact that he signed the Reevaluation Not Needed Agreement at the time it was presented to him.

For the Committee, this event is of only passing interest because even if this document was not signed, it is too late to now file a complaint on this event because it occurred more than one year prior to the filing of this complaint. Moreover, no evidence was presented to indicate that either side contested this "agreement" over the next two years. Nor is there any evidence that either party requested a reevaluation until the district made a request to reevaluate on October 12, 2022. Again, none of this is really relevant to this complaint because the agreement or lack of agreement happened in 2020, more than one year ago. The parent also stated in his phone conversation with Mark Ward that he felt threatened and forced to sign the agreement to not reevaluate the student. The parent added to his complaint that "every meeting in the past with Mrs. Venable and Mr. Cullinan was held in an intimidating environment, hostile and forcing myself to sign papers on these meetings..." This alleged intimidation is a matter that is beyond the scope of this appeal.

Added to all this, it was the district that eventually proposed to conduct a reevaluation and requested consent on October 12, 2022. The parent refused to give consent for the proposed reevaluation in two separate e-mails. (Report p. 8).

On that same date, October 12, Mr. Schmidt (the director) sent the parent an e-mail explaining the evaluation process for children with Developmental Delay, the need for consent to proceed, and that the parent could decline to give consent. (Report p. 9 and Exhibit 5c).

On October 17, 2022, the parent replied to Mr. Schmidt's e-mail, again declining to give consent. (Report p 9).

With regard to the parent's right to participate in the review of existing data, the investigator said:

> Regardless of the confusion caused by the PWN being dated prior to the scheduled IEP team meeting, the October 11, 2022, email shows USD #229 intended to give the parent the opportunity to participate in an IEP team meeting to discuss the reevaluation process, including the review of existing data. The email clearly stated that the parent did not need to sign anything until after the meeting. (Report, p 12)

Under these circumstances, where consent to conduct the reevaluation was denied, the district was precluded by law from conducting any further step in the reevaluation process. The district's PWN proposing a reevaluation and the willingness to talk about what the proposed reevaluation would include are the only reevaluation procedures the district was legally able to do, and the district did complete those procedures.

Based on the foregoing, the Committee finds that the information in the parent's appeal on this part of Issue 1 is insufficient to overturn any of the findings or conclusions of the investigator in the report, except for the error regarding the date the parent signed the agreement that a reevaluation was not needed. The Committee also finds that the error regarding the date the agreement was signed is immaterial to the final decision.

Part (b) of Issue 1

The district failed to consider the Independent Educational Evaluation provided by the parent.

With regard to the IEE portion of this issue, the facts are:

The IEE was completed on April 30, 2022 (Report, p. 6).

The parent provided the district with a copy of the IEE on May 12, 2022 (p 6).

The IEE was considered by the district in a meeting on the day the report was received by the district: May 12, 2022. (Report p 6).

On page 13 of the report, the investigator says: "In this case, interviews and documentation show that the parent provided a copy of the IEE to USD #229 and participated in a meeting to review the report on May 12, 2022." On the same page, the investigator said: "It is noted that while USD #229 did not agree with the recommendations of the IEE, it was obviously considered at both at the May 12, 2022, meeting with the school staff and again considered at the May 20, 2022, meeting with Mr. Schmidt."

On May 12, 2022, the IEP team notified the parent with a PWN that it was refusing the parent's request for more services, as recommended in the IEE. (Report, p 7).

After some negotiations, the district offered a more modest increase in services with a PWN, dated May 24, 2022.

As for the district's willingness to pay for the IEE, which came up in this appeal but was not an issue presented in this complaint, the letter from Chris Cullinan, dated April 5, 2022, says: "The district agrees to pay up to $1,000.00 for the evaluation. If the cost will exceed this amount, please notify us prior to proceeding with the evaluation to discuss."

The report says that: “The parent then requested an IEE at public expense and USD # 229 responded on April 5, 2022, agreeing to pay for the IEE.”

In his appeal, the parent objected to this statement, saying that he had never agreed to pay for the IEE. The Committee believes the parent was misreading this statement in the report. Where the report says the district responded, “agreeing to pay for the IEE,” means the district agreed to pay for the IEE, not that the parent had agreed to pay for the IEE.

The issue in this appeal is not whether the parent offered to pay for the IEE. The issue in this appeal is whether the district considered the IEE? As indicated above, on page 13 of the report, the investigator said, “In this case, interviews and documentation show that the parent provided a copy of the IEE to USD #229 and participated in a meeting to review the report on May 12, 2022 (emphasis added).” On the same page, the investigator said, “It is noted that while USD #229 did not agree with the recommendations of the IEE, it was obviously considered at both at the May 12, 2022, meeting with the school staff and again considered at the May 20, 2022, meeting with Mr. Schmidt.” The parent did not, in this appeal or in the initial complaint, provide any evidence that the district failed to consider the IEE. The district did provide evidence to the investigator that the district considered the IEE.

The Committee finds that the conclusion of the investigator on both parts of this issue should be sustained.

> ISSUE TWO: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student’s IEP as appropriate during the past 12 months when the student failed to make progress towards the IEP goals.

This issue was addressed on pages 15 through 19 in the report. On page 17, the investigator said: “IEP goal progress reports for the past 12 months show the student is making adequate progress to meet his IEP goals in both the April 7, 2021, and March 24, 2022. That appears to be the basis for the investigator’s conclusion that there was no violation on this issue. In his appeal, the parent does not dispute this finding. The parent does say he has concerns regarding “articulation errors on a variety of phonemes” and on “another type of learning disability that has normally been diagnosed at the stage of his developmental delay…” The parent does not identify this other “type of learning disability.” The parent also adds in his appeal that he is most concerned that the speech service provider has been changed four times. These are

legitimate concerns, of course, but these continuing concerns presents no challenge to the finding that two sets of progress reports show the student is making adequate progress toward IEP goals. The issue presented is lack of progress, not that the parent is free from concerns.

In Endrew F. v. Douglas County School District, 117 LRP 9767, 137 S. Ct. 988 (2017), the United States Supreme Court said that the duty of a school district to provide a free appropriate public education (FAPE) to a child with a disability is to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. In light of this FAPE standard set by the U.S. Supreme Court, it is appropriate progress that is required, not relief from concerns.

The Committee finds that the investigator's report should be sustained on this issue.

CONCLUSION

The Appeal Committee concludes that the complaint report is sustained in its entirety.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 21st day of December, 2022.

APPEAL COMMITTEE:

Crista Grimwood

Brian Dempsey

Ashley Niedzwiecki

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON NOVEMBER 7, 2022

DATE OF REPORT: DECEMBER 7, 2022

This report is in response to a complaint filed with our office by Ivan Trail on behalf of his son, The student. For the remainder of this report, The student will be referred to as "the student." The parent will be referred to as "the student's father" or "the parent."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on November 16, 2022. On November15 and 23 and December 1, 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:

- Psychological Evaluation report dated January 3-5, 2020
- Notice of Meeting dated May 12, 2021
- Multidisciplinary Team Report dated May 19, 2021
- IEP for the student dated May 19, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 19, 2021
- Behavior Specialist Data report covering the period of October 19 through November 23, 2021
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 9, 2021
- IEP for the student dated May 11, 2022
- IEP Progress Report – Annual Goal dated May 6, 2022
- Elementary Progress Report for the student for the 2021-22 school year
- IEP Progress Report – Annual Goal dated October 14, 2022
- October 19, 2022 email from the parent to the building principal et al

- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated November 3, 2022
- Email dated November 15, 2022 from the Chief Human Resources Officer for the district to the Mediation/Due Process Supervisor
- IEP Amendment Between IEP Meetings dated November 8, 2022
- IEP Amendment dated November 16, 2022
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 16, 2022
- Elementary Progress Report for the student for the first quarter of the 2022-23 school year
- Attendant Care Guidelines and Considerations
- Special Ed Student Contact Log dated November 23, 2022
- Daily Goals sheets for the period of November 8, 2021 through November 4, 2022
- Online Board Policy #5116 for the district @ usd259.org

Background Information

This investigation involves a nine-year-old boy who is enrolled in the third grade in a science and technology magnet school in his home district. Following an initial evaluation by the district in September of 2019, it was determined that the student was eligible to receive special education support under the Gifted category. On November 17, 2022, the parent gave written consent for Gifted services to be increased from 60 to 90 minutes per week (30 minutes for ELA enrichment and 60 minutes for mathematics enrichment).

The student has been diagnosed as having ADHD and Autism Spectrum Disorder. Following a May 2021 reevaluation, the student was determined to be considered an exceptional child under the category of Autism and began receiving special education support to address related needs.

The student's parents are divorced and share custody of the student. The student's father reports that he and the student's mother collaborated on the development of this complaint.

Issues

In his complaint, the parent identified four concerns.

Issue One: The district has repeatedly failed to provide an individual paraeducator for the student as recommended by professionals in the field of autism spectrum disorder, child psychology, and child psychiatry.

Applicable Statutes and Regulations

To address the requirements 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 regarding placement and services for their child (K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b)).

Prior written notice must be provided to parents whenever 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)).

While a district must consider recommendations regarding the student from outside evaluations presented by the parents, special education laws do not obligate the school to implement those recommendations.

At K.A.R. 91-40-51(b)(1), regulations state that a formal complaint must allege a violation of state or federal special education laws or regulation occurred not more than one year before the date the complaint is received and filed with the commissioner of education.

Parent's Position

The parent contends that the district has ignored the recommendations of professionals in the field of autism spectrum disorder, child psychology, and child psychiatry and failed to provide objective or valid reasons to deny the requests of both parents for the assignment of an individual paraeducator for the student.

District's Position

The district acknowledges that during the 2021-22 school year, the school did not conduct a reevaluation or initiate an IEP team meeting with the parents to complete district-required forms to determine whether the student needed 1:1 paraeducator support.

Investigative Findings

Parental Requests for 1:1 paraeducator support

The SPED Student Contact Log provided by the district shows that the school social worker contacted the student's mother by telephone on September 1, 2021 to

> *"clarify if [the mother] had [during a previous telephone conversation with the building principal] made an official request for one on one para support for her student…SW asked if [the mother] was just discussing ideas for intervention and seeking information about what was available or if she was making a formal request that we re-evaluate her student for this service. Parent mentioned that she had a friend who's [sic] grandson has a one on one paraeducator and she was wondering if this might be helpful for her student. SW explained the continuum of special education services, least restrictive environment, and parents rights. SW emphasized that it is [the mother's] right to make a request for any service at any time, just as the school may request she sign consent if we are seeing that student may need a re-evaluation. Parent stated that she wanted to let us know that she is open to any recommendations the school has along the continuum of special education support but was not making a formal request for a re-evaluation at this time."*

According to the SPED Student Contact Log, the school social worker again spoke with the student's mother by telephone on October 28, 2021. According to the log, the social worker was again following up with the student's mother regarding a request for a "one on one paraeducator." The log states that the

> *"SW explained different options for paraeducator support (more interrelated time vs. one on one) and asked [the student's mother] to clarify what she was requesting. Parent stated that she was requesting that [the student] be re-evaluated for one on one para support and also requested that he 'test out' of 2nd grade standards and not be required to do work that is tedious…SW explained the continuum of services that is typically given to students with disabilities and emphasized that while [the*

mother] has a right to request her student be evaluated for any service she believes he needs, one on one para services would be very restrictive and are generally not recommended. SW asked [the mother] if she was sure that she wanted to request this. SW also asked if she had discussed this with the student's father, recommending that they be on the same page about any re-evaluation that may be requested for the student. Parent agreed to put her request on hold until she spoke with the student's father. [The student's mother] requested that SW send her resources and information to help her have this conversation. SW mailed KSDE handbook, parents rights, and website for Families Together Inc., along with information about the continuum of special education services.

By report of the Mediation/Due Process Supervisor, the student's father subsequently made a request on November 16, 2021 for the student to receive 1:1 attendant care (a paraeducator) throughout his school day.

On December 7, 2021, the Mediation/Due Process Supervisor for the district directed the school to initiate an IEP team meeting with the parents to determine whether 1:1 attendant care support was needed. The team was directed to use the district-established "Attendant Care Guidelines and Consideration" to guide their discussion.

According to the attendant care guidelines established by the district, the assignment of a staff member to provide daily assistance to a student is a

"*critically important decision that can have serious negative consequences to the student. It is extremely resource intensive. A group process is required to consider the addition of attendant care. IEP team members (which includes parents) and your Campus Support must comprise the group."*

The attendant care guidelines established by the district outline the procedures that are to be followed when determining whether or not attendant care for a student is required. According to the guidelines, "Special Education Campus Support" must meet with the IEP Team (which includes parents) to review the completed Student's Abilities and Assistance Needs Matrix for Attendant Care…(consistent with needs as identified in the PLAAFPs [Present Level of Academic Achievement and Functional Performance]…"

No evidence was provided by the district to show that an IEP team meeting was convened to discuss the student's need for attendant care support. No evidence was provided by the district to show that the district-required matrix was completed.

The SPED Student Contact Log shows that the school social worker again spoke with the student's mother by telephone on December 10, 2021. The social worker explained to the student's mother the school-based team's reasons for refusing the parents' request to add paraeducator services. She offered to schedule an IEP team meeting with both parents in attendance to discuss any changes that were needed to the IEP. According to the log, "parent stated IEP meeting would not be needed." The social worker told the student's mother that she had "a right to request an IEP meeting or to request [the student] be re-evaluated for any service at any time in the future." According to the log, "SW asked the parent if she would prefer PWN [prior written notice of refusal] be emailed or paper copy sent home with student. [The student's mother] stated email was fine. SW emailed PWN with a copy of parents rights."

According to the prior written notice document which was dated December 9, 2021, (which was emailed to the parents on December 10, 2021) the district refused to conduct the reevalution because

> *"current data does not support that a more restrictive environment is needed at this time…Current special education services in place and behavior plan data were used as a basis for the proposed action. [The student] currently receives services for the exceptionalities of Autism and Gifted. He receives direct special education services in the regular education classroom (2nd grade), direct special education services in the regular education classroom (gifted), direct special education services outside the regular classroom (special ed room), counseling services outside the regular education classroom, and a behavior intervention plan that is implemented throughout the school day. Behavior Intervention Plan data for the 2nd quarter indicates that [the student] has had successful transitions an average of 82% (5/25 days were 70% or below) and completes work an average of 69% (8/25 days were 50% or below, 13/25 days were 75% or above). [The student] has been taken home by his father for behavior related issues at school 4 times this school year, but [the student] has not had any out of school suspensions.*
>
> *[The student] began taking a new medication on 11/20/2021 and if successful, this could decrease his needs for behavior support. 1:1 attendant care as a related service would be a significant change in level of restrictiveness and it may be in [the student's] best interest to consider other interventions along the continuum of services first."*

The SPED Student Contact Log contains no record of any additional discussion with the student's parents regarding the student's need for a one to one paraeducator during the remainder of the 2021-22 school year.

On October 19, 2022, the parent sent an email to the building principal and others requesting "an emergency reevaluation of the IEP."

The Mediation/Due Process Supervisor states that she spoke with both of the student's parents by telephone on October 21, 2022 to discuss their ongoing concerns. The parents once again requested a reevaluation and 1:1 attendant care for the student. The parents reiterated their request for the student to receive 1:1 support during the school day to assist with his behavioral needs. The supervisor informed the parents that she would contact the Executive Director of Elementary Student Support Services to request that "interim/intervention 1:1 attendant care for the student" be provided pending completion of a reevaluation and the development of a new IEP for the student. The parents agreed to this proposal.

Prior written notice of a proposed reevaluation was provided to the parents on November 3, 2022, and the parents provided written consent for the reevaluation on November 7, 2022.

On November 7, 2022, an attendant care paraeducator was transferred to the student's school to provide him with 1:1 support. The Mediation/Due Process Supervisor was informed of the transfer on November 15, 2022.

In a telephone call on November 16, 2022, the supervisor notified the parents that the paraeducator was in place. According to the supervisor, she told the parent that the paraeducator would not be with the student throughout the day but would be present at times which observations and existing data showed the student to be of need of support. Data would be collected while a paraeducator was in place pending completion of the reevaluation. That data would be used to inform decisions regarding the student's ongoing need for 1:1 support.

On November 17, 2022, a staff member with expertise in Autism, behavior management, and data collection and analysis began working with staff to complete an FBA (Functional Behavior Assessment), to develop targeted interventions including the use of 1:1 paraeducator support, to collect and analyze data for the reevaluation, and to provide input for the development of a new IEP for the student.

District's Failure to Follow Recommendations from outside providers

According to the district, the parents have provided only one report from an outside licensed clinical psychotherapist referencing an evaluation completed on January 3 and 5, 2020. That report does not contain any recommendation for the student to have 1:1 support.

Provision of FAPE

Progress toward attaining annual goals:

The student's May 19, 2021 IEP included six annual goals. According to the IEP Progress Report – Annual Goal form dated May 6, 2022, the student did not meet all of his goals, but demonstrated progress over baseline on each of his goals throughout the 2021-22 school year.

The student's current IEP was developed on May 9, 2022. That IEP includes eight annual goals. According to the IEP Progress Report – Annual Goal form dated October 14, 2022, the student was making progress at or above expected levels on five of these eight annual goals (63%). On two of the eight goals (#5 and #7), the student had made progress, but it was not yet clear whether, at the demonstrated rate of progress, the student would be able to achieve the annual goal. On one of his eight goals (#6) the student's progress was considered insufficient for him to meet his target by the end of the IEP period.

Goal #5 targets the student's response to non-preferred, whole-group or small-group activities and/or independent assignments. The goal aims at having the student attend to and remain on task for 15 minutes 75% of the time with no more than one verbal cue and without demonstrating task avoidance behaviors. The student's baseline level of performance for this goal was 20%. At both the May and October 2022 monitoring periods, data showed the student to be engaging in non-preferred activities for 10 minutes 85% of the time (with a target of 80% for 10 minutes with two verbal cues).

While he was not in May 2022 making adequate progress to achieve goal #7 related to transitioning without refusal 75% of the time (up from a baseline of 50%), the student was transitioning appropriately 88% of the time at the October 2022 monitoring period.

In both May and October of 2022, the student was not making adequate progress to achieve his sixth goal – a goal related to his recognition of his anxiety in "a situation

that intensifies [the student's] emotions" and subsequent implementation of previously taught replacement behaviors.

Elementary Progress Reports:

The student's Elementary Progress Reports for the 2021-22 school year and the first quarter of the 2022-23 school year contain a key to proficiency skill levels for the report:

- Level 3.0: Proficient: Student demonstrates mastery on grade level standards. This is the target/goal for student success and should be celebrated.
- Level 2.5: Student demonstrates partial success on grade level standards.
- Level 2.0: Developing: Student demonstrates understanding of the foundational skills related to the grade level standard.
  Level 1.5: Student demonstrates partial success on foundational skills but demonstrates major errors on grade level standards.
- Level 1: Emerging: With help, student demonstrates some understanding of foundational skills and grade level standards.

During the 2021-22 school year, the student was given proficiency marks in eight general categories. The student's marks fell below Level 3 in all but two of the ten areas assessed under the category of "Elem Behavior and Work Habits." Of the 27 total marks given in this category, only three fell at Level 3. For two quarters, the student earned a mark of three for "Core Principals: Demonstrates traits of good character in a variety of settings, such as honesty, kindness, self-control, and perseverance." During the second quarter, the student earned a three for "Participation and Engagement: Listen, participate in class, and engage in the learning process on a consistent basis." Of the remaining 24 marks under this category, 18 (67% of the 27 total) were at Level 2. The fourth quarter mark for "Follow Directions: Know and act in accordance to classroom routines and verbal or written directions" was at Level 1. Only two marks were given for "Social Awareness: Demonstrates awareness of others' thoughts, feelings, and differences [the student appropriately reacts to others in a variety of situations]." Those marks for the third and fourth quarters fell at Level 1.5. The fourth quarter mark for "Interpersonal Skills: Demonstrates communication and social skills to interact effectively within relationships" also fell at Level 1.5.

Of the 15 marks given under the category of Visual Arts on the 2021-22 progress report, the student earned marks below Level 3 in six:

- Level 2 for the first quarter in "Control art tools, materials, and processes," Participation and Engagement," and "Follow Directions;" and

- Level 2.5 for the second quarter in "Work Completion," "Participation and Engagement," and "Follow Directions."

The majority of the student's marks for the 2021-22 in, Science, Social Studies, and Vocal Music were at Level 3 or above. Marks of 2.5 or lower in Physical Education came in the areas of "Work Completion," "Participation and Engagement," "Following Directions," and "Following multi-step directions" and well as under the category of "Dribble with feet."

The student's progress report for the first quarter of the 2022-23 school year shows that the student fell below Level 3.0 in the following seven areas (18% of the 39 areas assessed):

- Participation and Engagement: Listen, participate in class, and engage in the learning process on a consistent level (2);
- Follow Directions: Know and act in accordance to classroom routines and verbal or written directions (1.5);
- Edit for correct capitalization (2);
- Edit for correct punctuation (2);
- Edit for correct spelling (2);
- Organize the events in a narrative chronologically and provide a sense of closure (2); and
- Use dialogue to show how characters respond to an event or experience (2).

All other marks place the student at Level 3 (22 of 39 or 56%) or at Level 4 (10 of 39 or 26%).

Summary and Conclusions

The district responded in a timely manner (less than 15 school days) to the October 19, 2022 request from the student's father for an "emergency reevaluation" of the student's IEP. The district requested written consent for the reevaluation on November 3, 2022 and initiated the reevaluation on November 17, 2022 after receiving written parental consent on November 7, 2022. Interim paraeducator support was put in place for the student pending completion of the reevaluation when decisions regarding the student's need for continuing paraeducator support will be made by an IEP team.

The timeliness of the district's responses to parental requests made during the 2021-22 school year prior to November 7, 2021 for the assignment of a paraeducator for the student were not investigated because these requests were made more than one year prior to the date this complaint was received by the Kansas State Department of Education on November 7, 2022.

However, the district's response to a November 16, 2021 request for paraeducator support for the student was investigated. In response to the request, the district sent the parents prior written notice of refusal to conduct a reevaluation to determine the student's need for paraeducator support on December 10, 2022. The prior written notice form was dated December 9, 2022. These dates fall within the required one year limit.

The prior written notice states that it could be in the student's "best interest to consider other interventions along the continuum of services" before conducting a reevaluation since "current behavior data does not support that a more restrictive environment [was needed at that time]." This determination was made by the school team without the participation of the parents and outside of the district's own established procedures which called for an IEP team meeting to review a completed district-developed matrix regarding the student's need for attendant care support. While the school social worker had on more than one occasion told the student's mother that she had the "right to request an IEP meeting or to request [the student] be re-evaluated for any service at any time in the future," the district failed to either reevaluate the student or to convene an IEP team meeting to discuss the student's need for reevaluation or paraeducator support. Because the district made decisions regarding the provision of services to the student outside of an IEP team meeting that included the parents, a violation of special education statutes and regulations ***is*** identified.

In his complaint, the parent asserts that the district failed to follow the recommendations of outside professionals who have supported the provision of paraeducator support for the student. However, only one report from an outside evaluator has been presented to the district by the parents, and that report does not include any reference to the student's need for paraeducator support. Had the district been provided with such a recommendation, the district would be required to consider the recommendation but would not have been required by statutes and regulations to implement it, though notice of refusal would have been required. A violation of special education statutes and regulations is ***not*** substantiated on this aspect of this issue.

The student's Elementary Progress Reports (grade cards) show that the student has been able to participate and make progress in the general education curriculum during the last 12-month period. While the growth of his academic skills is relatively greater than the development of his behavior and work habits, the student is nonetheless improving his understanding of foundational skills related to grade level standards in the latter area. Skills related to both behavior and work habits have strengthened during the first quarter of the 2022-23 school year as compared to the 2021-22 school year. A violation of special education statutes and regulations regarding the lack of provision of a FAPE is *not* established.

Issue Two: School personnel do not follow 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.

Parent's Position

The parent asserts that the district has failed to provide the student with several of the accommodations or modifications required by his IEP. According to the parent, this assertion is based on personal observation as well as reports from the student during casual conversation and during therapy sessions.

District's Position

The district asserts that data establish a pattern of implementation of his IEP sufficient to provide the student with a FAPE.

Investigative Findings

The student's May 9, 2022 IEP does not require the district to document the use of implementation of the accommodations and/or modifications specified in the document. However, the use of some of the specified accommodations and/or

modifications has been reflected on goal sheets completed daily and sent to the parents. The district also provided photographs to support the provision of several of the accommodations discussed below.

Nonverbal/verbal cues and visuals (timer and bullseye target for behavior support):
The student's May 9, 2022 IEP states that the student "needs cues throughout the school day and visuals to stay on task. He uses a timer throughout the day to help him transition."
The parent asserts that the student has reported that the school does not use nonverbal cues to assist him when making transitions from one task to another.

The district provided the investigator with a number of examples of the use of cues and visuals. For example, a Behavior Bullseye is used with the student to process through discussions about his behavior. The student and the teacher place tokens on the chart to rank their separate impressions regarding the student's feelings and actions. A color-coded card reflecting various levels of frustration is also used with the student to facilitate discussions about his frustration.

A color countdown card with numbers one through five is used to assist the student with transitions. This year, the student has indicated that he doesn't need to see all the numbers, so the card he is using has numbers 1, 3, and 5 with two blank dots (5 O 3 O 1).

The student's "Daily Goals" sheets completed during the period of November 1 through December 9, 2021 contained a section entitled "Antecedent (Trigger). Goal sheets included in that section contain the question, "Did you use the behavior bullseye?" The goals sheet for November 8, 2021 shows that the student used the bullseye on that date.

While specific reference to the bullseye was removed from the goals sheet beginning December 13, 2021, the continued availability of the bullseye was documented on the goals sheet for January 26, 2022. During the remainder of the 2021-22 school year, the student moved throughout his school day with a backpack that contained his bullseye and countdown color cards.

The student's use of the bullseye was targeted for specific data collection by the Behavior Specialist for the district during the period of October 19 to November 23, 2021. The student made use of a bullseye target on 38% of data days during that period.

While the bullseye and countdown color cards have not been utilized extensively for the student during the 2022-23 school year, timers have been available to him. The district reports that the student has, however, often preferred to use the classroom clock to assist him with transitions. The use of the clock has been paired with verbal cues as to how much time remains before a preferred task or break. The student's classroom teacher and his interrelated resource teacher use their phone timers with the student who seems to enjoy turning off the timer when the alarm sounds.

Preferential seating/be "teacher helper" when deemed possible by teacher:
The student's May 9, 2022 IEP states that the student "needs to be seated where visual/auditory distractions are at a minimal [sic], the teacher is easily accessible, and a positive peer role model is next to him. He does well being a teacher helper during math where he can sit close to the teacher and help click through the PowerPoint lessons when used."

The parent contends that the student has not reported that he has been allowed to sit near the teacher or in a location where distractions are minimized. The parent also asserts that the student has not reported that a positive peer role model is seated nearby.

According to the district, designated seating areas for the student vary depending upon activity and classroom. In the gifted education resource room, for example, the student and peers work at a kidney-shaped table that allows the student to be near the teacher and peers for direct instruction. Partner work is done at a separate table with peers nearby.

In the general education classroom, direct instruction for the student generally occurs at a kidney shaped table that puts the student in close proximity to the teacher and peers. When in Music, the student's designated seating area on the floor is near the teacher and peers in a spot that is intended to reduce distractions.

When the teacher is providing instruction to the whole class in the Science room, the student is seated near her but away from the door to reduce distractions. The student also has the option to use the desk in his safe spot rather than sitting with classmates if he is uncomfortable being too close to others.

With regard to being able to serve as a "helper," the student has been assigned a task which he completes near the end of the school day. At that time, he goes to the office and picks up slips of paper that reflect changes in dismissal for other students. The

student then goes to the classrooms of those students and attaches the slip to a clip outside the teacher's door. Additionally, the student's gifted teacher and his resource teacher use him to make deliveries for them in the building. In the general education classroom, students are randomly chosen to carry out weekly "jobs." The student has been selected for some of these jobs; he has chosen to carry out some and declined others.

Safe place or Safe Person:

The student's May 9, 2022 IEP states that the student "needs a safe place to go to help manage his emotions."

The parent states that the student has indicated that the only safe place available to him in the classroom is one reserved for "community calm time" – a section in the corner of the classroom with pillows and books. The parent contends that he and the student's mother have asked the school to establish a separate safe place with minimal distractions for the student and to provide the student with a weighted blanket and other calming items, but the school's failure to provide these things (which are not required by the student's IEP) suggests that there would be no compliance with this accommodation.

According to the district, the student's safe spot varies by classroom. The gifted education teacher reports that, in her resource room the student has a designated calm down spot available to the student in the area where "Zones of Regulation" are housed, but the student has not had to use the spot or the "Zones" this year. According to the gifted education teacher, the student talks openly about his frustration level and is able to process that frustration with the teacher at the time it is occurring.

In the general education classroom, the student has a designated safe space where he keeps his First/Then/Choice Board. A counter in that area houses his Behavior Bullseye and color card as well as a collection of social stories. Staff report that the student likes having these items in this area because he has easy access to them.

In the Music room, the student's safe spot contains a timer and a list of calming strategies. The student also has a designated safe spot at the back of the Art room. In the Science room, the student has a safe spot where an hourglass timer and posters of ideas and instructions on calming strategies can be found.

In the interrelated Room, the student's safe spot has pillows and bean bags to lay or sit on. The area also contains a few fidgets/sensory items as well as some cards that outline strategies to help the student calm down.

Allowing for different modalities to respond:

The student's May 9, 2022 IEP states that the student should be allowed to use "a different modality to respond [to help] alleviate stress and anxiety."

The parent asserts that the school has not consistently and "gently" provided this accommodation. As an example, the parent cites an incident during an Emergency Safety Intervention (ESI) when the student was not allowed to make a paper airplane as a strategy for self-soothing. This ESI is addressed below under issues three and four.

The gifted education teacher reports that the student has been allowed a variety of response options including both verbal and written responses, drawing, and tape recording his answers.

The district has provided other examples of varying response modalities:

- Providing verbal responses;
- Dictating answers to a scribe;
- Using abbreviations rather than writing the entire word ("P" for past tense, "Pr" for present tense, etc.);
- Pointing to an answer;
- Circling an answer; and/or
- Highlighting or underlining an answer.

Failure to follow aspects of the student's Behavior Intervention Plan (BIP):

The Behavior Intervention Plan (BIP) included in the student's May 9, 2022 IEP contains four strategies/supports that have been used with the student to prevent non-compliance behaviors. The IEP reflects the effectiveness of each of these strategies/supports during the 2021-22 school year.

- First/Then Work System:
  According to the parent, the student reports that he is given homework in the same manner as his classmates and is not allowed to engage in preferred activities until the end of the school day (rather than after each non-preferred activity as required by his IEP).

The First/Then system is addressed in the student's BIP under the "Prevention – Changes to environment, instruction, adult and peer interactions portion of the "Behavior Intervention Plan" section of the student's May 9, 2022 IEP. The IEP states that the initial implementation of the system (using a file folder containing pictures to indicate activities to be completed before earning a preferred activity) "has been revised and is smaller. It is something [the student] can refer to, but it is noted that [the student] has done well with verbal cues this year. If he sees breaks on the work system, he can often become obsessive of them and really want to focus on them instead of the "First" or the work assigned."

- Visual countdown for Transitions:
  The IEP describes this strategy/support as using five colored strips of paper, each with a different number (1-5) written on it. The strips are stacked with the strip containing the number 5 on top. As the time for a transition nears, the strips are removed, counting down to 1 at which point the student is reminded that it is time to transition to the next activity.

  The IEP states that the "visual countdown [using color strips] has not been needed this year. [The student] likes to use a timer and is able to set the timer and monitor it, himself."

- Provision of positive reinforcement:
  Under the section of the BIP entitled "Instruction to teach and reinforce Replacement Behavior(s)," the IEP states that "staff will provide positive reinforcement."

  As examples of the district's failure to follow the BIP, the parent asserts that telling the student that making a paper airplane was "not an option" and stating that the student "committed assault" when he struck a teacher are not "positive" reinforcements. The parent also states that the student has reported that staff have said "not so nice" things to him.

  Daily goal sheets for the student document many examples of the provision of positive reinforcement for the student.

  - "Received a sticker during Art. Positive call to dad." November 18, 2021
  - "Positive call to dad." (November 19, 2021)
  - "Positive call home." (November 22, 2021)
  - "Made a positive call home." (November 29, 2021)

- "A superstar in Library today." (December 5, 2021)
- "[The student] was amazing today." (January 5, 2022)
- "Today was so awesome!!" (January 18, 2022
- "You did the right thing" (February 16, 2022)
- "I bragged about his communication." (February 22, 2022)
- "[The student] was wonderful helping his math buddie with Dreambox. Very polite." (February 23, 2022)
- [The student] "stated, 'I am starting to get frustrated!' I agreed and [reinforced] his good communication." (February 28, 2022)

- Engaging in conversation about a preferred topic:
  The section of the BIP entitled "Identify steps to follow when examples of Target and/or Peak Behavior occurs" contains the following suggested response when the student "becomes escalated:"

  > *"Staff member will ask [the student] to leave over-stimulating environment (if possible) to engage in conversation about a preferred topic. After giving [the student] positive attention about a preferred topic and observing that [the student] is no longer in an escalated state, staff member will reflect with [the student] on what happened and on how he can transition successfully back to being on task using the first/then system."*

  According to the parent, the student has reported that his attempts to talk about a preferred topic at times other than the end of the day are either discouraged or not allowed. However, the student's IEP does not require that the student be allowed to discuss preferred topics at any time during the school day. Rather, this strategy is to be used during those times when "Target and/or Peak Behavior occurs."

Summary and Conclusions

The district has provided evidence to show that all of the four IEP accommodations specified by the parent in his complaint have been implemented. Four areas of alleged failure of the district to follow the student's BIP were investigated, and the investigator determined the district was following the BIP as written in all four areas. A violation of special education statutes and regulations is *not* established on this issue.

Issue Three: School personnel are falsifying documentation.

Applicable Statutes and Regulations

At K.A.R. 91-40-51, Kansas regulations state that a formal complaint must allege a violation of *state or federal special education laws or regulations*.

Emergency Safety Interventions (ESI) are not governed by special education laws or regulations. At K.S.A. 72-89d03, Kansas statutes address the seclusion and restraint of students and require districts to develop and implement written policies to govern the use of ESI in schools. These written policies must include a local dispute resolution process to be used by a parent when filing a complaint with the local district regarding the use of an ESI (K.S.A. 72-89d03(g)(2)).

Parent's Positon

The parent contends that, following the implementation of an ESI on October 19, 2022, the district failed to notify the parent of the ESI in a timely manner and sent the parent an improperly dated "data feedback form."

Investigative Findings

At #5116 in its Board Policies, the district addresses Emergency Safety Interventions. At item 6, the policy addresses "Dispute Resolution" and designates the district's Chief Human Resources Officer as the complaint investigator to conduct investigations of parental complaints regarding ESI.

The parent followed district-established procedures and filed an ESI complaint with the Chief Human Resources Officer on November 16, 2022. An internal investigation by the district was initiated.

Because this complaint investigator does not have jurisdiction over complaints related to the implementation of an ESI, this issue was not investigated further.

Issue Four: School personnel improperly used a physical restraint.

As stated above under Issue Three, this complaint investigator does not have jurisdiction over complaints regarding ESI. The focus of this issue is the district's action related to an ESI. Therefore, this issue was not addressed as a part of this

investigation. An internal investigation was initiated by the district under the guidelines established in the district's Board Policy.

Corrective Action

Information gathered in the course of this investigation has identified noncompliance with special education statutes and regulations on issues presented in this complaint. Specifically, violations occurred with regard to K.A.R. 91-40-17(a) and 34 C.F.R. 300.501(b) which require that parents be included as members of an IEP team making decisions regarding services for their child.

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 K.A.R. 91-40-17(a) and 34 C.F.R. 300.501(b) by including the parent(s) in any IEP team meeting where decisions will be made regarding the provision of services (1:1 attendant care/paraeducator) for this student.

The district has already begun the process of completing a reevaluation of the student to better inform the team of the student's needs. Parental consent for the reevaluation of the student was provided by the parent on November 7, 2022. Special education statutes and regulations require that the reevaluation be completed within 60 school days of the date of that consent – by March 3, 2023. However, the district is hereby directed to expedite the reevaluation process and to convene a meeting to review the results of the reevaluation with the parent(s) by no later than January 31, 2023. If the parent declines to participate in the reevaluaton process (by, for example, not providing information regarding the student's performance in the home setting), the reevaluation shall be completed without delay using all otherwise available data. Additionally,

1) By no later than 5 school days following the reevaluation review meeting, USD #259 shall convene an IEP team meeting to determine whether any changes to the student's current IEP are warranted. This meeting may be held on the same date as the reevaluation team meeting if the parties agree to do so.

2) The IEP team must consider any recommendations from outside agencies or individuals for paraeducator support if those recommendations are presented by the parent(s) in the form of a written report or statement or are offered in-person by such an outside source, but the district is not obligated to accept such recommendations.

3) By no later than 5 school days following the IEP team meeting described above under Item #1, USD #259 shall submit to Special Education and Title Services (SETS)

   a) A copy of the notice of meeting for the reevaluation review;
   b) A copy of the notice of meeting for the IEP team meeting (one notice may cover both meetings if they are held on the same day);
   c) A copy of the reevaluation report; and
   d) A copy of any prior written notice documents related to changes to the IEP or proposed refusals resulting from the reevaluation and IEP review.

4) 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)

KANSAS STATE DEPARTMENT OF EDUCATION

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT

FILED AGAINST

UNIFIED SCHOOL DISTRICT #232

ON NOVEMBER 16, 2022

DATE OF REPORT DECEMBER 16, 2022

This report is in response to a complaint filed with our office on behalf of the student by his mother, The mother. In the remainder of the report, the student will be referred to as "the student." The student's mother is the mother and in the remainder of this report she will be referred to as "the mother," "the parent," or "the complainant." The complaint is against USD #232, Desoto Public Schools. In the remainder of the report, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #232.

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 November 16, 2022 and the 30-day timeline ends on December 16, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on November 17, 2022 and Lee Hanson USD #232 Director of Special Services, Megan Turpin, Principal, Riverview Elementary, Andy Gloshen, School Psychologist, Riverview Elementary, Raina Newth, Speech and Language Pathologist, Riverview Elementary, Kristen Schwartz, Special Education Coordinator for Elementary, Jessee Altman, Early Childhood School Psychologist, Andrea West, Principal, Cedar Trails Exploration Center - Early Childhood, on December 5, 2022.

The Complaint Investigator also received emails from the parent and USD #232 between November 17, 2022 and November 30, 2022.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

- Email from Parent to Melissa Radetic, Speech Pathologist, Cedar Trails Exploration Center - Early Childhood dated July 27, 2022 at 11:20 a.m.
- Email from Ms. Radetic to Parent dated July 27, 2022 at 12:40 p.m.
- Email from Parent to Ms. Radetic dated July 28, 2022 at 8:23 p.m.
- Email from Andrea West, Principal, Cedar Trails Exploration Center - Early Childhood to Parent, Raina Newth, Speech Language Pathologist, Riverview Elementary and Megan Turpin, Principal, Riverview Elementary dated July 29, 2022 at 3:20 pm
- Email from Mr. West to parent dated August 1, 2:09 p.m.
- Email from Ms. Turpin to all parents of incoming students, undated
- Email from parent to Ms. Turpin dated August 8, 2022 at 9:38 a.m.
- Email from Ms. Turpin to parent dated August 8, 2022 at 1:34 p.m.
- Email from Mr. Andrew Gloshen, School Psychologist, Riverview Elementary to parents dated August 12, 2022 at 2:10 p.m.
- Email from Ms. Newth, to Parent dated August 12, 2022 at 2:42 p.m.
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated August 12, 2022, electronically signed by the parent on August 15, 2022 giving consent
- Communication Log dated August 17, 2022

- Children's Mercy Report from the Speech Clinic dated November 3, 2022
- Email from Cheri Eskina, Kindergarten Teacher, Riverview Elementary to Ms. Newth dated November 10, 2022 at 2:53 p.m.
- Speech/Language Screening Results for student dated November 11, 2022
- Email from Ms. Newth to Parent dated November 15, 2022 at 12:55 p.m.
- USD #232 Notice of Tier Support for Speech and Language to parents dated November 15, 2022
- Email from parent to Mr. Gloshen dated November 15, 2022 at 5:07 p.m.
- Email from Parent to Ms. Newth dated November 15, 2022 at 5:10 p.m.
- Prior Written Notice for Evaluation or Reevaluation dated November 16, 2022, signed by the parent on November 16, 2022
- Email from Ms. Newth to Parent dated November 16, 2022 at 11:44 a.m.
- Communication Log note from November 16, 2022
- Unified School District No. 232 2022-23 Calendar

Background Information

This investigation involved a kindergarten-aged student enrolled at Riverview Elementary in USD #232. He is not currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA). Beginning in November he began receiving Tier III support for speech. He has been screened at yearly intervals for speech/language delays since August 2020 and has been observed for behavioral issues at community day cares prior to entering kindergarten. He was receiving speech therapy prior to kindergarten and the parent reported that his speech was not improving and impacting his behavior. In November, his parents had his speech evaluated at Children's Mercy Speech Clinic. The child lives at home with his parents.

ISSUE ONE: The USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

Positions of the Parties

The complainant alleged that in August 2022 she reached out to the speech pathologist at Cedar Trails Exploration Center - Early Childhood due to no changes in her child's speech, increased frustration when he was misunderstood and other speech deficiencies that were not age appropriate. The Cedar Trails speech pathologist then reached out to Riverview Elementary staff (where the student would be entering Kindergarten later that month). Staff at Riverview Elementary stated that although they were unfamiliar with the student, they would evaluate the student based on the request. The complainant was informed that the evaluation would start the second week of school and likely not conclude until November.

On September 23, 2022 at the parent teacher conference, she learned that the teacher was unaware of the request. As of November 9, 2022 the parent alleged she had received no communication from the school about the evaluation.

The district acknowledged that the district was in violation of failing to complete a comprehensive special education evaluation for the student with a suspected disability within timelines. They responded that once they discovered this the school psychologist, Speech Language Pathologist and principal contacted the parent on November 15, 2022 to explain the error in completing the evaluation within the 60-day timeline. An option of continuing the evaluation in tandem with Tier III interventions was discussed. At that time, the parent withdrew consent for the evaluation and decided to continue with the Tier III interventions. Additionally, the parent provided the SLP and School Psychologist with an outside evaluation for her son from Children's Mercy Assessment center.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #232.

- The parent signed the PWN for an initial evaluation of her child on August 15, 2022 starting the 60-school day timeline.
- The school district calendar shows that the 60-school day timeline to complete the initial evaluation would end on November 15, 2022.
- The district acknowledges the error in completing the evaluation through documentation and interview.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) the initial evaluation is to be completed within the 60-school-day timeline. The 60-school-day timeline begins when the agency receives written parent consent to conduct the initial evaluation.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

ISSUE TWO: The USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to secure parent approval to conduct an evaluation for special education and related services.

Positions of the Parties

The complainant alleged that the district did not conduct the evaluation for special education within the timeframe. Due to the focus on getting services to the student quickly it was determined to investigate this allegation to determine if this step impeded the evaluation.

The district responded that two prior written notices were provided to the parent. The first PWN dated August 12, 2022 responding to the parents request to evaluate her son for special education and related services was signed by the parent on August 15, 2022. A second PWN dated November 16, 2022 was provided to the parent to withdraw the request for evaluation and agreeing to Tier III speech services was signed electronically by the parent on November 16, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #232.

- The findings of Issue One are incorporated herein by reference.
- The PWN dated August 12, 2022 responding to the parents request to evaluate her son for special education and related services was electronically signed by the parent on August 15, 2022.

- The PWN dated November 16, 2022 was provided to the parent to withdraw the request for evaluation and agreeing to Tier III speech services was signed electronically by the parent on November 16, 2022.
- Emails from the district to the parent and interview with the district show that the district requested and received parent consent to conduct the evaluation and in November to withdraw the request.
- The parent agrees and emails show she signed both PWNs giving consent for an evaluation and later withdrawing the request and requesting Tier III interventions.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.300(a) and K.A.R. 91-40- 27(a)(1) the school must obtain informed consent from the parent of the child before conducting the evaluation. Further, parents must be provided procedural safeguards to help the family understand the process.

The signed PWNs and email exchanges between both the parent and district demonstrate that the parents consented to both actions and agreed with the actions.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to secure parent approval to conduct an evaluation for special education and related services.

ISSUE THREE: The USD #232, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent input into the evaluation process.

Positions of the Parties

The complainant alleged that the district agreed to conduct the initial evaluation for special education and related services based on her request and she signed consent to start. She was told the next steps and expected timeline but not contacted at any time other than her initial contact expressing her area of concern.

The district acknowledged that the district was in violation of failing to complete a comprehensive special education evaluation for the student with a suspected disability

within timelines. Therefore, USD #232 failed to allow parent input into the evaluation process.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #232.

- The findings of Issue One and Two are incorporated herein by reference.
- Documentation and interview confirm the parent was not contacted about the evaluation process after the initial consent.
- Documentation and interview confirm the district acknowledges that due to not completing the special education evaluation within the timeline they did not include the parent into the evaluation process.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.301 and K.A.R. 91-40-8 during the initial evaluation each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements: (1) The evaluation team shall review existing evaluation data on the child, including the following information: (A) evaluations and information provided by the parent of the child; (B) current classroom-based, local, and state assessments and classroom-based observations; and (C) observations by teachers and related services providers. (2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed.

As the district acknowledged the evaluation was not conducted the parent was therefore not included in the evaluation. It is noted that the parent has since withdrawn her request for the evaluation of her child in favor of Tier III services.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to provide parent input into the evaluation process.

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 regulations at 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) specifies the initial evaluation is to be completed within the 60-school-day timeline.

In this case, the evidence supports the finding that USD #232 did not complete the student's initial evaluation within the 60-school-day timeline. Documentation, Interview, and the District Response letter of November 29, 2022 document this. It is noted that the parent reports a good outcome for her child in spite of the noncompliance.

A. Federal regulations at 34 C.F.R. 300.301 and K.A.R. 91-40-8 specifies that parental input is required and integral to the initial evaluation for special education and related services.

In this case, the evidence supports the finding that USD #232 did not include parent input into the student's initial evaluation through documentation, Interview, and the District Response letter of November 29, 2022.

Based on the foregoing, USD #232 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #232 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) by completing initial evaluations, and if the child is eligible, to develop and implement an IEP within the required 60-schooll-day timeline, unless the district has obtained written parental consent to an extension of time.
2. Further, by February 1, 2023 USD #232 will complete the following: (1) submit a written statement of assurance to Special Education and Title Services (SETS) that the district's practices and procedures for initial evaluation and parent communications have been reviewed and revised as appropriate to be responsive and compliant with evaluation procedures of the Individuals with

Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act; (2), if the district has a tracking system to comply with the timelines for the special education evaluation process, it will provide a written description of that system to SETS; (3) If the district does not currently have a tracking system to comply with the timelines for the special education evaluation process, then one will be created, and a written description of that system will be sent to SETS.

3. Within 15 calendar days after the planned December 2022 meeting to discuss the success of the Tier III interventions and whether an evaluation for special education services is warranted, USD #232 shall submit the decisions and associated signed documentation showing parent participation of this meeting.

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, Ph.D.

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
BLUE VALLEY UNIFIED SCHOOL DISTRICT # 229
ON NOVEMBER 30, 2022

DATE OF REPORT: December 21, 2022

This report is in response to a complaint filed with our office by Matthew Rogers, attorney for Mother and Father on behalf of Father and Father's son, Student. Student will be referred to as "this student" in the remainder of this report. The other student involved in the incident described below, will be referred to as the "other student." Mother and Father will be referred to as "the parents."

Investigation of Complaint

The investigator reviewed the complaint submitted on behalf of the student and reviewed the written response of the district. The district's response was sent by e-mail on December 9, 2022, by Stephanie Lovett-Bowman, attorney for the school district.

Background Information

The relevant facts of this case are not in dispute, in any material way. An incident occurred between this student and another student on August 23, 2022. The incident between this student and the other student was recorded on a surveillance video. The surveillance video did not include any audio recording.

This student received two 30-minute after-school detentions from Dr. Lisa Stolper, the principal of Lakewood Middle School (LKMS), as the result of the incident. One of the detentions, which both students received, was based on the behavior of both students to each other. The other detention imposed on this student was based on this student's behavior toward Dr. Stolper during the incident.

Mr. Rogers wrote a letter, dated September 21, 2022, to the Registrar at the Lakewood Middle School. The September 21, 2022, letter included a release form signed by this student's mother, authorizing the district to disclose to Mr. Roger's firm "any and all education records pertaining to [this student]." The September 21, 2022, letter made a request for a "complete copy" of specified records, or "a mutually agreeable date and time to view" the specified records. The records specified in the September 21, 2022, letter were as follows:

1. Any video or audio recordings depicting the purported incident occurring on August 23, 2022, between [this student] and another student that District staff reported to the [parents]. This request includes but is not limited to video and audio recordings taken before, during, and after the incident that relate in any way to the alleged incident, including any staff interactions with either student.

2. Any written statements (e.g., emails or text messages describing the incident, witness statements, etc.) regarding the alleged incident described in paragraph one.

On September 29, 2022, Melissa Hillman, Chief Legal Officer for USD 229, responded to the September 21 letter from Mr. Rogers to the Registrar. In that response letter, Ms. Hillman stated that, with regard to this student's academic records, the parents could work directly with the Lakewood Middle School's registrar to obtain the specific records they were seeking. In the September 29, 2022, letter, Ms. Hillman also stated that "there are no written witness statements." In the September 29, 2022, letter Ms. Hillman denied the request to review the video, saying "Because it is not possible to view the video without disclosing information related to both students, and parental consent to share information was denied, the school appropriately informed [the parents] about the content of the video as it relates to [the student]."

In a letter, dated October 25, 2022, Mr. Rogers responded to Ms. Hillman's September 29, 2022, letter, making legal arguments, and stating that the parents "do not object to viewing a redacted version, if the redaction does not impair the video's meaning."

Issues

In the complaint, the parent raises one issue:

Issue One: The school district refused parental access to student records, including: (1) video recording(s) depicting a reported incident between [this student] and another student that the District relied upon in disciplining [this student] and (2) statements, emails, text messages, etc. regarding the alleged incident.

Analysis

The first consideration is whether the Kansas State Department of Education has jurisdiction to investigate this complaint. For the following reasons, this investigator concludes that it does not.

The requirements to obtain parent consent to disclose personally identifiable information and to provide parent access to education records is similar in both the Individuals with Disabilities Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA). They are not, however, identical.

The pertinent state regulation is K.A.R. 91-40-50(b). That regulation says:

> (b) The provisions in 34 C.F.R. §§ 300.612 through 300.624, as in effect on August 14, 2006, and published in 71 fed. reg. 46802-46804 (2006), which concern parental access to education records and confidentiality of those records, are hereby adopted by reference.

Accordingly, Kansas has adopted the federal regulations, at 34 C.F.R. 300.613 with regard to a parent's right to access the special education records for their child. 34 C.F.R. 300.613(a) states:

> (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Sec. 300.507 or Sec. Sec. 300.530 through 300.532, or resolution session pursuant to Sec. 300.510, and in no case more than 45 days after the request has been made (emphasis added).

Assuming that the surveillance video, along with other "statements, emails, text messages, etc." are all education records, and this investigator makes no finding that they are education records because that is not essential to the conclusion in this report, that assumption would provide only the first of two steps in applying the access rights specified in the IDEA regulations to this complaint.

The access rights under special education law apply only when both of the conditions specified in 34 C.F.R. 300.613(a) are present. That is, in order to have a right to access a record under this regulation, that record must be both an education record and a record that is "collected, maintained, or used by the agency under this part."

"This part" refers to Part B of the IDEA. Thus, the right of a parent to access records under this regulation is more limited than the general right of a parent to access records under FERPA. Under FERPA a parent has a right to access any of the education records of their child. Under the IDEA regulations, the parent's right to access education records is limited to their child's education records that are collected, maintained, or used under Part B (Kansas adds the state special education laws and regulations). Those records might include items such as Individual Education Programs (IEPs), IEP team notes at an IEP team meeting, Prior Written Notices (PWNs), evaluation and reevaluation reports; Alternative Educational Settings for disciplinary removals that constitute a change of placement; Independent Educational Evaluations (IEEs), and other records collected, maintained or used for special education matters.

Nothing in the facts of this case supports a finding that the surveillance video, along with other "statements, emails, text messages, etc." that are the subject of this complaint were collected, maintained, or used by the district due to a special education requirement or for a special education purpose. The incident involved two students involved in a physical engagement with each other. The incident was witnessed by school personnel and was also caught on a video surveillance camera used to monitor the student population as a whole. The disciplinary action involved an after-school detention, not a suspension, much less a suspension that triggered rights or responsibilities under special education laws and regulations. There is no evidence that any special education service was missed, or that any special education placement was changed, or that any special education process was used or required as a result the incident. There is no evidence that any of this student's rights or protections under special education laws and regulations was, in any manner, affected by the way the district

proceeded in the incident or in the following discipline. Rather, the evidence supports a finding that the information contained in the surveillance video and in statements, emails, and text messages regarding this incident, were collected, maintained, and used by the district to address the physical incident that occurred between these two students in the same way the information would have been used in any similar event involving the general education population. The evidence presented makes it clear that there was simply no connection between how this information was collected, maintained, or used and this student's status as a child with a disability.

This distinction is important because Kansas regulation K.A.R. 91-40-51(a) states that in order to file a special education complaint, the complaint must include: (1) a statement that the agency has violated a state or federal special education law or regulation; and (2) the facts on which that statement is based. Likewise, federal regulation 34 C.F.R. 300.153(b) requires that the complaint include an allegation of a violation of Part B and the facts upon which the allegation is based.

For the reasons stated above, this investigator finds that this complaint fails to state a factual basis to support a violation of any IDEA or Kansas special education statute or regulation, specifically including the access provision of 34 C.F.R. 300.613, which requires parental access to education records of their child that are collected, maintained, or used for special education purposes .

Conclusion

The allegation of a violation of federal and/or Kansas special education laws or regulations is not substantiated.

Right to Appeal

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

KANSAS
STATE DEPARTMENT OF
EDUCATION
900 S.W. Jackson Street, Suite 102
Topeka, Kansas 66612-1212

Mark Ward
Attorney II
Special Education and Title Services
(785) 296-0920
mward@ksde.org
www.ksde.org

Kansas leads the world in the success of each student.

The Kansas State Department of Education does not discriminate on the basis of race, color, national origin, s disability or age in its programs and activities and provid equal access to the Boy Scouts and other designated you groups. The following person has been designated to ha inquiries regarding the nondiscrimination policies: KSDE General Counsel, Office of General Counsel, KSDE, Lando State Office Building, 900 S.W. Jackson, Suite 102, Topeka 66612, (785) 296-3201.

K.A.R. 91-40-51(f)(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 #446

ON NOVEMBER 17, 2022

DATE OF REPORT DECEMBER 26, 2022

This report is in response to a complaint filed with our office on behalf of Student by his mother, Mother. In the remainder of the report, Student will be referred to as "the student." Student 's mother is Mother and in the remainder of this report she will be referred to as "the mother," "the parent," or "the complainant."

The complaint is against USD #446, Independence Public Schools. In the remainder of the report," the "school," the "district," and the "local education agency (LEA) shall refer to USD #446.

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 November 17, 2022 and the 30-day timeline ends on December 19, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent initially by telephone on November 17, 2022 and Matt Ysusi on December 5, 2022.

The Complaint Investigator also received emails from the parent and USD #446 between November 17, 2022 and November 30, 2022.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

- Psychological Evaluation dated December 10, 2021 from The Therapy Center
- Report from Four County Mental Health Center dated July 13, 2022
- 2022-2023 Student Accommodation for the student
- Email from Mr. Ysusi to parent dated August 15, 2022 at 12:09 p.m.
- Email from parent to Matt Ysusi, Assistant Director, Tri-County Special Education Interlocal 607 dated August 15, 2022 12:16 p.m.
- Email from Kurt Seiler, Principal, Independence High School USD #446 to parent on August 16, 2022 at 7:05 a.m.
- Score page from Renaissance Parent Report dated August 19, 2022
- Email from Mr. Ysusi to Mr. Seiler and Ms. Allen dated August 23, 2022 at 3:33 p.m.
- Email from Ms. Allen to parent dated August 24, 2022 at 8:36 a.m.
- Email from parent to Ms. Allen dated August 24, 2022 at 11:29 a.m.
- Email from Ms. Allen to Mr. Ysusi dated August 25, 2022 at 11:33 a.m.
- Independence High School Transcript for the student, generated on August 25, 2022
- Independence High School Student Test Scores Detail for the student, generated on August 25, 2022
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated August 29, 2022
- Conference Summary dated August 29, 2022 and signed by Tri-County Assistant Director, Principal, and School Psychologist. It was noted that the Parent attended via Zoom
- Email from parent to Mr. Ysusi dated August 31, 2022 at 11:45 a.m.
- Letter from NLK Counseling Mental Health Therapy dated September 2, 2022 referencing June 2021 Treatment Plan
- Email from parent to Teresa Jefferson, School Psychologist, USD #446 and Valene Schmitz Counselor, Independence High, USD #446 dated September 13, 2022 at 8:32 a.m.

- Email from parent to Ms. Allen and Mr. Ysusi dated October 10, 2022 at 8:19 a.m.
- Email from Mr. Ysusi to parent dated October 12, 2022 at 1:41 p.m.
- Email from parent to Mr. Ysusi dated October 12, 2022 at 2:16 p.m.
- Email from Ms. Allen to Emily McCambridge, Director, Tri-County Special Education Interlocal 607 dated October 13, 2022 at 11:24 a.m.
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated October 14, 2022 and signed electronically by Parent on October 14, 2022
- November 4, 2022 signed letter from Labette Health
- Email from parent to Mr. Ysusi, Ms. Allen and Ms. McCambridge dated November 4, 2022 at 1:55 p.m.
- Email from parent to Ms. McCambridge dated November 7, 2022 at 1:50 p.m.
- Notes from a phone call from parent to Ms. McCambridge dated November 7, 2022 at 4:10 p.m.
- Email from the parent to Ms. Allen dated November 14, 2022 at 11:44 a.m.
- Email from parent to Ms. Reichenberger dated November 15, 2022 at 12:46 p.m.
- Email from parent to Ms. Reichenberger dated November 15, 2022 at 1:02 p.m.
- Email from Ms. Reichenberger to parent dated November 15, 2022 at 1:08 p.m.
- Email from parent to Lindsey Reichenberger, Home and Health Coordinator, USD #446 and Marcus Lanning, Assistant Principal, Independence High, USD #446 dated November 15, 2022 at 2:02 p.m.
- Email from Mr. Holehan to parent dated November 15, 2022 at 3:20 p.m.
- Email from parent to Travis Holehan, Math Teacher, USD #446 dated November 15, 2022 at 4:11 p.m.
- Parent Teacher Contact Log inclusive of dates August 22, 2022 through November 16, 2022
- Star Diagnostic Report - Reading for the student, generated on November 17, 2022
- Star Diagnostic Report - Math for the student, generated on November 17, 2022
- Behavior Detail Reports for the 22-23 school year for the student
- Email from parent to Ms. Allen dated November 18, 2022 at 12:33 p.m.
- Email from Ms. Allen to parent dated November 18, 2022 at 1:01 p.m.
- Email from parent to Ms. Allen dated November 18, 2022 at 1:26 p.m.

- Email from Ms. Allen to parent dated November 18, 2022 at 2:28 p.m.
- Email from parent to Ms. Allen dated November 18, 2022 at 3:26 p.m.
- Email from parent to Ms. Allen dated November 21, 2022 at 8:58 a.m.
- District response to complaint received on November 29, 2022

Background Information

This investigation involves a 10th grade student enrolled at Independence High school in USD #446 since August 2022**.** He attended Andover eAcademy, a virtual school previously. He is not currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA). He receives accommodations for extended time during testing.

He lives with his mother and sister. He currently receives services through Four County Mental Health outside of school and participates in the PreETS program. In a November 2021 evaluation from the Therapy Center, he received three DSM-V Diagnosis: Disruptive Mood Dysregulation Disorder, Attention Deficit Hyperactivity Disorder - Combined Subtype, and Unspecified Trauma-and Stressor-Related Disorder. The report also states that he was previously diagnosed with Attention Deficit Hyperactivity Disorder in 2014.

> ISSUE ONE: The USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

Positions of the Parties

The complainant alleged that her student has medical diagnoses that impact his educational performance at school. This is demonstrated by his involvement in local mental health services. He has successfully used accommodations in the past such as extended testing time and just this year when the accommodation was not provided demonstrated his need for this type of support. She contends that the district needs to conduct a comprehensive special education evaluation to determine the impact of his medical diagnoses on his school behavior and social and educational performance. She alleged that the district did not consider the student's mental health disability when refusing to evaluate her child for special education services in August 2022 and

while they have agreed to evaluate him for special education in October 2022, he is missing school and his grades are going down as a result of his disability.

The district stated that staff had been working with the parent to determine if he qualified for accommodations through Section 504 of the Rehabilitation Act and when the student was not found eligible the parent sought an initial special education evaluation to determine if he would qualify for services as a child with disabilities. In considering the August 2022 request for a special education IDEA evaluation the district examined the 2021-2022 school year school records such as grades, interview with past teachers , attendance, behavior incidents since the 2022-2023 school year had not started and a past psychological evaluation. Additional mental health records were sought and then the parent revoked consent for the district to obtain additional mental health records.

On October 14, 2022, the district reconsidered evaluating the student for special education eligibility based on student increased school tardies, behavior incidents and falling grades – behaviors they were seeing this school year but had not seen the previous school year. The district considers October 17, 2022 as the beginning date for conducting the evaluation and have planned to complete the evaluation steps as outlined in IDEA by December 16, 2022, within the timeline.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #446.

- The parent reported that she had initially been working with the district to secure accommodations through Section 504 of the Rehabilitation Act for her son and when he was not found eligible sought to ensure he receives services for his mental health disabilities that will help him to be successful in school.
- The parent requested an initial evaluation of her child on August 15, 2022.
- The school calendar for the district shows the first day of school was August 16, 2022
- The school psychologist received a Psychological Evaluation from the Therapy Center dated 11/18/21 from the parent pm August 22, 2022. The district

considered this report and reported the following considerations from the report shaped their decision to not conduct a special education evaluation

    - The Educational History section on page 2 of the repot stated that the student "had been able to maintain average to above average grades"
    - The BASC results on page 5 of the report conclude the student exhibited primarily externalizing problems, noting that externalizing is more conduct disorder. They further note that internalizing behaviors are typically a red flag for emotional disabilities.
    - Page 6 of the report recommended accommodations, such as increased time and taking short breaks as successful for the student.
    - The report mentioned behavioral concerns occurring in the home, but the teachers and guidance counselor did not report behavioral or mental health concerns for the student based on his previous school year.

- The district received an Authorization of Disclosure for the Monarch Center (a mental health center), PreEts, the student's therapist and vocational rehabilitation to secure outside documents on August 23, 2022 according to the Parent Teacher Contact Log to further investigate the mental health concerns.
- The parent revoked the Authorization of Disclosure and reported she will provide the documents herself to ensure that confidential information about the student is not unnecessarily shared.
- The district and parent discussed meeting on or around August 25, 2022 for the district to better understand the behavioral and mental health concerns the parent wanted evaluated. Emails show different dates, methods of meeting and attendees were discussed, however no documentation shows this meeting occurred.
- On August 29, 2022, the district provided a PWN refusing the request to conduct a special education evaluation. The refusal stated:

    > The team reviewed education records and agreed that a need for specialized instruction is not present. The student's state

> assessment and other test scores show that he continues to progress in general education. The team acknowledged a documented disability, through mental health documentation, but it does not present a need for specialized instruction at this time.

- The district reported falling grades and increasing behavior concerns. Based on ongoing conversations with the parents and theses newly identified school concerns the district issued a PWN requesting consent to conduct an initial evaluation for special education and related services for the student on October 14, 2022 and the parent signed on October 14, 2022.

- The district reported that record review is complete, and testing is underway as of December 5, 2022.

- Mr. Ysusi reported on December 5, 2022 that the BASC, observation and interview will serve as evaluation for the Social/Emotional Status/Behavioral Status. The School Psychologist and teacher will provide the General Intelligence data for the evaluation; Mr. Ysusi just completed the Academic Performance evaluation, and student interview. Transition Skills is still planned, and Student Intervention Team data and observation data are still being collected.

- Mr. Ysusi reports that the district has begun to reach out to the parent to meet to discuss the evaluation findings

- Mr. Ysusi reports that the district is on track with the evaluation to meet with the parent by December 16, 2022

- The district response to the allegations state “As of 11/28/22 The school team still has 35 school days to complete the special education evaluation.”

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) the initial evaluation is to be completed within the 60-school-day timeline. The 60-school-day timeline begins when the agency receives written parent consent to conduct the initial evaluation.

The PWN shows the parent granted consent for the special education evaluation on October 14, Consent and subsequently asked for an updated to the PWN. The PWN was revised and sent to the parent and the updated PWN parent approval was received on November 17, 2022. It is noted that the district and parent met December 16, 2022 to discuss the evaluation results, so the timeline was met.

Although a request was made for an evaluation earlier in August the request was refused by the district after review and consideration of mental health reports and a PWN was issued. As such, this earlier request is not a part of the timeline.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

> ISSUE TWO: The USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to secure parent approval to conduct an evaluation for special education and related services.

Positions of the Parties

The complainant alleged that the district did not conduct the evaluation for special education within the timeframe (Issue 1). Due to the focus on getting services to the student quickly it was determined to investigate this allegation to determine if this step impeded the evaluation.

The district responded that prior to the parent's request for an initial special education evaluation she had sought Section 504 accommodations for the student. After ongoing discussions with the parent about mental health diagnoses a second PWN was provided to the parent on October 14, 2022 seeking consent to conduct an initial special education evaluation that was signed by the parent on October 14, 2022. Based on discussion about the PWN the October 14, 2022 PWN was again revised and parent signature was received on October 17, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #446.

- The findings of Issue 1 are incorporated herein by reference.
- A PWN was provided to the parent on October 14, 2022 asking consent to conduct an initial special education evaluation that was signed by the parent on October 14, 2022.
- The October 14, 2022 was amended based on parent request in a handwritten form to show acknowledgement and acceptance of the request. Consent for the revised PWN was received on November 17, 2022.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.300(a) and K.A.R. 91-40- 27(a)(1) the school must obtain informed consent from the parent of the child before conducting the evaluation. Further, parents must be provided procedural safeguards to help the family understand the process.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to secure parent approval to conduct an evaluation for special education and related services.

ISSUE THREE: The USD #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent input into the evaluation process.

Positions of the Parties

The complainant alleged that the district is not fully considering mental health documents provided to them in planning a "true" comprehensive evaluation, including the parent and other team members who want to participate to determine IF his behavior is in any way related to the mental health diagnoses. For consent to be proper, the parent must be fully informed of all evaluation procedures for which consent is being granted. A new prior written notice needs to be filled out with all updated areas of concern and specific methods of evaluation of the student.

The district responded that the parent consistently, not only provided input into the evaluation process, but the evaluation plan was also revised based on that input. The district acknowledged it did not create a completely new PWN based on the request of the parent, but instead updated the PWN in a handwritten form to show acknowledgement and acceptance of her request. This revised PWN was then provided to the parent and consent for it was received on November 17, 2022. The district reports they are evaluating in the areas the parent requested.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #446.

- The findings of Issue 1 and 2 are incorporated herein by reference.
- The parent requested an initial evaluation of her child on August 15, 2022.
- On August 16, 2022, the district began gathering information based on the August 15, 2022 parent request for an initial special education evaluation. The district response reports that an important part of gathering information to respond to the request was information about behavioral or mental health concerns as identified by the mother.
- The school psychologist received a Psychological Evaluation from the Therapy Center dated 11/18/21 from the parent on August 22, 2022.
- The district received an Authorization of Disclosure for the Monarch Center (a mental health center), PreEts, the student's therapist and vocational rehabilitation to secure outside documents on August 23, 2022 according to the Parent Teacher Contact Log to further investigate the mental health concerns.
- The parent revoked the Authorization of Disclosure and reported she will provide the documents herself to ensure that personal information about the student is not unnecessarily shared.
- The district and parent discussed meeting on or around August 25, 2022 for the district to better understand the behavioral and mental health concerns the parent wanted evaluated. Emails show different dates, methods of meeting and

attendees were discussed, however no documentation shows this meeting occurred.

- On August 29, 2022, the district provided a PWN refusing the request to conduct a special education evaluation. The refusal stated:

> The team reviewed education records and agreed that a need for specialized instruction is not present. The student's state assessment and other test scores show that he continues to progress in general education. The team acknowledged a documented disability, through mental health documentation, but it does not present a need for specialized instruction at this time.

- The district reported the student's current teachers began to notice concerns. As a result, the district determined to evaluate the student at this time to see if his mental health disabilities were now impacting his education.
- The October 14, 2022 PWN listed review of existing data and new data to evaluate five areas (1. Social/Emotional Status/Behavioral Status; 2. General Intelligence, including Executive Functioning; 3. Academic Performance; 4. Transition Skills; and 5. Other inclusive of Classroom Observation, Observation Data and Student Interview).
- The parent provided the district additional mental health information on October 24, 2022.
- This written plan was shared with the parent and subsequently the PWN was updated in a handwritten form to include evaluation for executive functioning, transition, and possible autism spectrum disorder .
- An email from the parent on November 17, 2022 to the school psychologist, Ms. Allen states:

> Sometime last week you and I had a conversation on the phone regarding additional areas of concern that were going to be addressed through the initial sped eval on the student. I wanted to make sure as a parent, I had mentioned them all, and request a revised PWN that adds them to the former reason for evaluation.

- The November 17, 2022 email from the parent to Ms. Allen specifically requests evaluation 1) to rule/out LD, 2) executive functioning, 3) autism spectrum

disorder, 4) observations to determine when he is sleeping to provide the medical doctors feedback for medication effects, and 5) transition.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.301 and K.A.R. 91-40-8 during the initial evaluation each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements: (1) The evaluation team shall review existing evaluation data on the child, including the following information: (A) evaluations and information provided by the parent of the child; (B) current classroom-based, local, and state assessments and classroom-based observations; and (C) observations by teachers and related services providers. (2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed.

Based on review of the documentation and interview during the investigation the district did review existing evaluation data which included A) information and evaluations provided by the parent of the child on several occasions. It is noted that they revised their evaluation plan based on the parent's information and recommendations from evaluations from diagnostic report from Four Winds. Further, the plan included B) review of course grades and Star assessments and completion of classroom assignments, C) observations by the student's current teachers, and then identified additional data needed with the parent's input.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to provide parent input into the evaluation process as outlined in 34 C.F.R. 300.301 and K.A.R. 91-40-8.

ISSUE FOUR: The USD #501, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), did not conduct a manifestation determination based on a series of short-term removals totaling more than 10 days for the student when the district had knowledge that a disability is suspected during the 2022-2023 school year.

Positions of the Parties

The complainant alleged the district is sending the student to ISS for excessive tardiness since the evaluation process began on October 18, 2022 including ones that were excused upon arriving at school. She contends the tardies are due to a new medication he has been prescribed for a medical diagnosis that may impact his education. Instead of being sent to ISS and missing more instruction she has repeatedly asked that the district be tolerant during the evaluation, and she be contacted so that she can work with the medical provider to adjust the dosage.

The district responded that the student has only been to ISS for 2 days since consent to evaluate was obtained. There is no need to conduct a manifestation determination at this point. In addition, there is no pattern of behavior evident.

Findings of the Investigation

- The findings of Issue 1, 2 and 3 are incorporated herein by reference.
- The district received consent for a special education evaluation on 14, 2022.
- The Behavior Detail Report shows from October 14, 2022 to November 28, 2022 when evidence was submitted for this investigation the following behaviors and discipline occurred, with a note as to whether short-term removals from school occurred that would change placement.

Date	Behavior	Discipline	Short-term removal?
11/3/22	Cell phone violation	1 day of ISS	No
11/4/22	Failure to comply	3 hrs. of FNS (Fright Night School) (after school hours)	No
11/15/22	Cumulative Tardies	1 day of ISS	No
11/16/22	Disruptive Behavior	Sent to Assistant Principal	No

School Communication Note dated November 7, 2022 at 4:10 p.m. documented a phone conversation between the parent and Special Education Director inquiring

about protections if the student is in ISS in regard to manifestation determination. The Special Education Director read to the parent directly from Chapter 13, page 203, and page 206 in the [Kansas] Process Handbook. The Special Education Director recorded that following clarification questions she asked the parent if she understood what she read, and it was recorded that she said yes.

Applicable Regulations and Conclusions

According to 34 CFR § 300.534(a) "A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge … that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred."

In this case the special education evaluation is underway with parent consent, so the student is deemed a student with a disability under IDEA for discipline protection.

There are 2 days of ISS and no pattern of behavior. There is no need to conduct a manifestation determination at this point.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the student's disciplinary protections afforded by IDEA were denied.

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, Ph.D.
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 #446

ON NOVEMBER 7, 2022

DATE OF REPORT DECEMBER 9, 2022

This report is in response to a complaint filed with our office on behalf of Student by her mother, Mother. In the remainder of the report, Student will be referred to as "the student." Student's mother is Mother and in the remainder of this report she will be referred to as "the mother," "the parent," or "the complainant."

The complaint is against USD #446, Independence Public Schools. In the remainder of the report, "the "school," the "district," and the "local education agency (LEA) shall refer to USD #446.

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 November 7, 2022 and the 30-day timeline ends on December 9, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on November 21, 2022 and the Director of Special Education, Ms. Emily McCambridge, Director of Special Education, USD #446 on November 21, 2022.

The Complaint Investigator also received emails from the parent and USD #446 between November 9, 2022 and December 1, 2022.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. A number of materials were related to a separate investigation regarding Section 504 and were not considered in this investigation. Other materials provided referred to past school years and were reviewed for context but not recorded as they were not considered in the investigation either. The following materials were used as the basis of the findings and conclusions of the investigation:

- List of Diagnostic and Statistical Manual of Mental Disorders – 5 (DSM-5) diagnoses for student, dated, July 22, 2021 from Four County Mental Health Inc.
- Email from Parent to Matt Ysusi, Assistant Director, Tri-County Special Education Interlocal 607 dated August 15, 2022 at 10:55 a.m.
- Email from Mr. Ysusi to Parent dated August 15, 2022 at 12:09 p.m.
- Email from Parent to Mr. Ysusi dated August 15, 2022 at 12:16 p.m.
- Star Diagnostic Report: Math, Test Date of August 18, 2022
- Star Diagnostic Report: Reading, Test Date of August 18, 2022
- Email from parent to Ms. Teresa Jefferson, Counselor, Independence High School dated August 23, 2022 at 2:40 p.m.
- Email from parent to Ms. Elizabeth Allen, School Psychologist, Tri-County Special Education Interlocal 607 dated August 23, 2022 at 2:49 p.m.
- Email from Mr. Ysusi to Mr. Kurt Seiler, Principal, Independence Schools, and Ms. Allen, on August 23, 2022 at 3:33 p.m.
- Email from parent to Ms. Allen dated August 23, 2022 at 4:33 p.m.
- Email from parent to Ms. Allen dated August 25, 2022 at 8:36 a.m.
- Email from parent to Ms. Allen dated August 25, 2022 at 8:56 a.m.
- Email from parent to Ms. Allen dated August 25, 2022 at 11:29 a.m.
- Email from Ms. Allen to Mr. Ysusi dated August 25, 2022 at 11:33 a.m.

- Authorization of Disclosures for PreETS Specialist - Amber McVey and Natasha Klutts, LSCSW, signed by parent on August 23, 2022 with handwritten note stating “Revoked all on 8/25/22”
- Authorization of Disclosures for Four County Mental Health-Rachel Rhodes, unsigned with handwritten note stating “Revoked all on 8/25/22”
- Email from Ms. Jefferson to parent dated August 26, 2022 at 12:18 p.m.
- Email from Parent to Mr. Seiler dated August 26, 2022 at 12:43 p.m.
- Email from Mr. Seiler dated August 26, 2022 at 1:00 p.m.
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated August 29, 2022, mailed to the parent on August 30, 2022
- Email from Parent to Mr. Ysusi and Ms. Allen dated October 21, 2022 at 2:48 p.m.
- Email from Parent to Ms. Allen, Mr. Ysusi dated October 24, 2022 at 3:41 p.m.
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 1, 2022, mailed to the parent on November 1, 2022.
- Response to Child Complaint 23FC446-001 from #446 staff, dated November 17, 2022
- Semester 1 In-Progress grades report
- Behavior Detail Report, 22-23 High School
- Student Intervention Team Playbook, Independence High School, undated
- Independence High School 21-22, 22-23 Student Accommodations table, undated

Background Information

This investigation involves a 10th grade student enrolled at Independence High School in USD #446. She also attended her 9th grade year at Independence High School in USD #446. She is not currently receiving special education or related services as a child with a disability per the Individuals with Disabilities Education Act (IDEA). She has received accommodations for social emotional regulation through a Tier III intervention at the parent’s request since ninth grade. Her mother reports the accommodations are for sensory issues associated with her medical diagnosis and disabilities.

She lives with her adoptive mother and brother. She has attended a number of schools during her school career but has been at Independence High School for the past two school years. She currently receives services through Four County Mental Health outside of school. Prior to attending Independence High School, she spent nine months at a psychiatric residential care facility and upon returning to home she finished her school semester attending virtual instruction. In spite of attending a number of schools she maintains good grades.

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 #446, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consider social/emotional status and sensory issues associated with her medical diagnosis when considering an evaluation for special education and related services during the 2022-2023 school year.

Positions of the Parties

The complainant alleged that the district did not consider the student's mental health disability when refusing to evaluate her child for special education services. She alleged that the district did not look at their own files, which included a diagnostic document listing four DSM - 5 diagnoses that was shared with the district following a nine-month stay at a Psychiatric Residential Therapeutic Facility in considering whether to evaluate. She stated that the district only considered the students grades, disciplinary records and how many times she visited the counseling office as a basis for refusing the evaluation. Had they looked at the other information they would have reached a different conclusion and evaluated her for special education services for sensory issues and the impact of OCD within the school setting.

The district responded that when the parent initially requested an evaluation for special education in August, they began to consider the student according to a number of

areas to determine if an evaluation for special education and related services was indicated. Record reviews revealed the student's grades, and test scores were very good. They found she had had office discipline records due to cell phone use, but they report that it is typical to any student at her high school. No concerns had been brought to the Student Intervention Team (SIT) by present or previous teachers. The district responded that they did not have any records indicating mental health concerns. They reported they were working with the parent to obtain these. However, prior to receiving these documents the request for evaluation and information from outside agencies was withdrawn. They found that Tier III interventions were provided to the student as accommodations however the student rarely, if ever uses these accommodations. Further, she was not observed to have any social emotional or mental health concerns justifying a special education evaluation and issued a Prior Written Notice documenting that consideration. During the second request for an evaluation the district considered concerns about ADHD, generalized anxiety and PTSD along with the previous areas investigated and again did not find that her school performance and behavior warranted a special education evaluation for services.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #446.

- The Parent and district agree the student has never received special education services nor been referred for special education in the past and that parent and district reported no educational concerns.
- One email describes a conversation between one of the student's teachers and the parent. In this email the teacher describes noticing some social emotional concerns, prompting her to look at the student file. She discovered that the student had previous concerns so contacted the parent to learn more. The parent provided the accommodations to the teacher.
- Documents show that on August 15, 2022 the parent emailed the Tri-County Special Education Interlocal 607 to make a request for a special education evaluation for the student with concerns related to the student receiving accommodations for mental health medical diagnoses.

- Emails document that the district offered the parent an opportunity to meet to share information and records related to her concerns and explained the district's IDEA responsibility for evaluation requests and timelines. The parent inquired about withdrawing consent to evaluation and the process was explained in the email.
- An email demonstrated that the parent notified the district about revising the requests for information needed for the special education evaluation so that unnecessary information would not be provided to the district. She further offered to re-sign revised Release of Information (ROI). The ROI demonstrates she had not signed the release that would reveal highly sensitive personal information.
- Three Authorization of Disclosure documents with copied notes stating, "Revoked all on 8/25/22", and interview show that on August 25, 2022 the parent revoked consent for release of records for outside agencies.
- An email from the parent states she would send the information from the outside agencies herself. Other documentation from the parent states,

> …I have not yet received anything from the *mental health agency* and honestly was advised today that it is not my responsibility to get the information although I have attempted to do so via email, text, and phone calls since yesterday.

- On August 26, 2022 the parent wrote to the district in an email, "Upon further advisement, I am requesting to withdraw my special education evaluation for my 'child'".
- Documentation shows the district had a meeting scheduled with the parent to discuss the request for special education evaluation, but prior to that meeting the parent withdrew her request for the special education evaluation so the meeting was subsequently canceled.
- On August 29, 2022, the district responded to the parent's request and withdrawal of the special education evaluation with a PWN acknowledging the parent's withdrawal. The PWN further agreed in not evaluating her because she did not "display a need for specialized instruction" This document was mailed to the parent on August 30, 2022.

- Documentation and interview show that on October 21, 22 the parent made a second request for special education evaluation when other supports were not made available.
- The November 1, 2022 PWN documents a refusal for a special education evaluation based on

> Parent has requested an initial evaluation of student due to concerns at school and mental health diagnoses including ADHD, generalized anxiety and PTSD. The student team is refusing to conduct an initial evaluation at this time. The school team relied on several points of data to make this determination. The school did receive mental health documentation from parent that included mental health diagnoses mentioned above. The school also reviewed district assessment data, current classroom performance and grades, and information from principals and school counselors. The *student's* current district assessment scores (Aug. 22) show that she scored in the 85th percentile in Math and the 72nd percentile in reading, both with a grade equivalency over the 12th grade level. Further, district assessment scores show progress in the general curriculum as evidence the *student* as she scored in the 53rd percentile in Reading in August 2021 and in the 63rd percentile in Dec. 2021. The same can be said for progress in the general curriculum in the area of math as evidenced by district assessment scores. In April of 22, the *student* scored in the 77th percentile and 85th percentile in August of 2022. Further, the team reviewed disciplinary data and information from the school counselors when looking at social emotional concerns brought forth by parent. The *student* has received two referrals for cell phone use and has elected to go to the counter office on a couple of occasions to talk or take a break from class this school year. Administration also expressed the *student* is doing well in

> classes as she currently has 4 A's and 3 B's. After review of these materials, the school team does not feel that the *student* is in need of any specialized instruction or services and therefore is refusing to conduct the evaluation. Supports that the *student* may require are available to her and all students within the general school setting.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.305 state that as part of an initial evaluation the IEP and other qualified professionals must review existing evaluation data on the child including evaluations and information provided by the parents, current classroom-based local, or state assessment and classroom-based observations and observations by teachers to determine if any additional data are needed.

There were two requests for evaluation considered in this complaint.

The August 15, 2022 request for evaluation was withdrawn by the parent, but the district followed the IDEA guidance to consider the evaluation and documenting it in a Prior Written Notice on August 29, 2022 stating that "The team agreed with parent, and believes that student does not display a need for specialized instruction" based on team recommendations, parent input, and file review of records.

The second request for evaluation was made on October 24, 2022 by the parent. It is found that the district again followed procedure and expanded their previous consideration based on parents' specific concerns for ADHD, generalized anxiety and PTSD. Review of documentation and interview with the district found that the district met the requirements for evaluation by reviewing the effects of these concerns based on attendance, grades, district assessment and again found no concerns to warrant an evaluation for special education and related services.

Further, according to 34 C.F.R. 300.503 Written Notice must be provided to the parent proposing to initiate or refusing to evaluate the student along with a description and explanation why the district refused to evaluate. As well a description of the evaluation procedure, assessment, record, or report used for refusing the evaluation, a copy of

procedural safeguards, other options considered and why those options were rejected and any other relevant factors.

It is found that the August 29, 2022 Prior written Notice provided a description and explanation for rejecting the request to evaluate the student for special education based on a review of records, including grades, attendance, district assessment, discipline records, referrals to the SIT review committee, observations by classroom teachers, and review of records available to the district provided by the parent. It is documented that the district provided the parent procedural safeguards and listed one other option considered and why it was rejected.

It is further found that the November 1, 2022 Prior written Notice provided a description and explanation for rejecting the request to evaluate the student for special education based on district assessment scores, grades, office referrals, mental health documentation provided by the parent and information from administration. It is documented that the district again provided the parent procedural safeguards and listed one other option considered and why it was rejected.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to consider mental health issues in the parent's request for and evaluation for 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.

Donna Wickham, Ph.D.

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
BLUE VALLEY UNIFIED SCHOOL DISTRICT # 229
ON NOVEMBER 30, 2022

DATE OF REPORT: December 21, 2022

This report is in response to a complaint filed with our office by Matthew Rogers, attorney for the parents and on behalf of the parents' son, The student. The student will be referred to as "this student" in the remainder of this report. The other student involved in the incident described below, will be referred to as the "other student." The parents will be referred to as "the parents."

Investigation of Complaint

The investigator reviewed the complaint submitted on behalf of the student and reviewed the written response of the district. The district's response was sent by e-mail on December 9, 2022, by Stephanie Lovett-Bowman, attorney for the school district.

Background Information

The relevant facts of this case are not in dispute, in any material way. An incident occurred between this student and another student on August 23, 2022. The incident between this student and the other student was recorded on a surveillance video. The surveillance video did not include any audio recording.

This student received two 30-minute after-school detentions from Dr. Lisa Stolper, the principal of Lakewood Middle School (LKMS), as the result of the incident. One of the detentions, which both students received, was based on the behavior of both students to each other. The other detention imposed on this student was based on this student's behavior toward Dr. Stolper during the incident.

Mr. Rogers wrote a letter, dated September 21, 2022, to the Registrar at the Lakewood Middle School. The September 21, 2022, letter included a release

form signed by this student's mother, authorizing the district to disclose to Mr. Roger's firm "any and all education records pertaining to [this student]." The September 21, 2022, letter made a request for a "complete copy" of specified records, or "a mutually agreeable date and time to view" the specified records. The records specified in the September 21, 2022, letter were as follows:

1. Any video or audio recordings depicting the purported incident occurring on August 23, 2022, between [this student] and another student that District staff reported to the [parents]. This request includes but is not limited to video and audio recordings taken before, during, and after the incident that relate in any way to the alleged incident, including any staff interactions with either student.

2. Any written statements (e.g., emails or text messages describing the incident, witness statements, etc.) regarding the alleged incident described in paragraph one.

On September 29, 2022, Melissa Hillman, Chief Legal Officer for USD 229, responded to the September 21 letter from Mr. Rogers to the Registrar. In that response letter, Ms. Hillman stated that, with regard to this student's academic records, the parents could work directly with the Lakewood Middle School's registrar to obtain the specific records they were seeking. In the September 29, 2022, letter, Ms. Hillman also stated that "there are no written witness statements." In the September 29, 2022, letter Ms. Hillman denied the request to review the video, saying "Because it is not possible to view the video without disclosing information related to both students, and parental consent to share information was denied, the school appropriately informed [the parents] about the content of the video as it relates to [the student]."

In a letter, dated October 25, 2022, Mr. Rogers responded to Ms. Hillman's September 29, 2022, letter, making legal arguments, and stating that the parents "do not object to viewing a redacted version, if the redaction does not impair the video's meaning."

Issues

In the complaint, the parent raises one issue:

Issue One: The school district refused parental access to student records, including: (1) video recording(s) depicting a reported incident between [this student] and another student that the District relied upon in disciplining [this student] and (2) statements, emails, text messages, etc. regarding the alleged incident.

Analysis

The first consideration is whether the Kansas State Department of Education has jurisdiction to investigate this complaint. For the following reasons, this investigator concludes that it does not.

The requirements to obtain parent consent to disclose personally identifiable information and to provide parent access to education records is similar in both the Individuals with Disabilities Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA). They are not, however, identical.

The pertinent state regulation is K.A.R. 91-40-50(b). That regulation says:

> (b) The provisions in 34 C.F.R. §§ 300.612 through 300.624, as in effect on August 14, 2006, and published in 71 fed. reg. 46802-46804 (2006), which concern parental access to education records and confidentiality of those records, are hereby adopted by reference.

Accordingly, Kansas has adopted the federal regulations, at 34 C.F.R. 300.613 with regard to a parent's right to access the special education records for their child. 34 C.F.R. 300.613(a) states:

> (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Sec. 300.507 or Sec. Sec. 300.530 through 300.532, or resolution session pursuant to Sec. 300.510, and in no case more than 45 days after the request has been made (emphasis added).

Assuming that the surveillance video, along with other "statements, emails, text messages, etc." are all education records, and this investigator makes no finding that they are education records because that is not essential to the conclusion in this report, that assumption would provide only the first of two steps in applying the access rights specified in the IDEA regulations to this complaint.

The access rights under special education law apply only when both of the conditions specified in 34 C.F.R. 300.613(a) are present. That is, in order to have a right to access a record under this regulation, that record must be both an education record and a record that is "collected, maintained, or used by the agency under this part."

"This part" refers to Part B of the IDEA. Thus, the right of a parent to access records under this regulation is more limited than the general right of a parent to access records under FERPA. Under FERPA a parent has a right to access any of the education records of their child. Under the IDEA regulations, the parent's right to access education records is limited to their child's education records that are collected, maintained, or used under Part B (Kansas adds the state special education laws and regulations). Those records might include items such as Individual Education Programs (IEPs), IEP team notes at an IEP team meeting, Prior Written Notices (PWNs), evaluation and reevaluation reports; Alternative Educational Settings for disciplinary removals that constitute a change of placement; Independent Educational Evaluations (IEEs), and other records collected, maintained or used for special education matters.

Nothing in the facts of this case supports a finding that the surveillance video, along with other "statements, emails, text messages, etc." that are the subject of this complaint were collected, maintained, or used by the district due to a special education requirement or for a special education purpose. The incident involved two students involved in a physical engagement with each other. The incident was witnessed by school personnel and was also caught on a video surveillance camera used to monitor the student population as a whole. The disciplinary action involved an after-school detention, not a suspension, much less a suspension that triggered rights or responsibilities under special education laws and regulations. There is no evidence that any special education service was missed, or that any special education placement was changed, or that any special education process was used or required as a result the incident. There is no evidence that any of this student's rights or protections under special education laws and regulations was, in any manner, affected by the way the district proceeded in the incident or in the following discipline. Rather, the evidence

supports a finding that the information contained in the surveillance video and in statements, emails, and text messages regarding this incident, were collected, maintained, and used by the district to address the physical incident that occurred between these two students in the same way the information would have been used in any similar event involving the general education population. The evidence presented makes it clear that there was simply no connection between how this information was collected, maintained, or used and this student's status as a child with a disability.

This distinction is important because Kansas regulation K.A.R. 91-40-51(a) states that in order to file a special education complaint, the complaint must include: (1) a statement that the agency has violated a state or federal special education law or regulation; and (2) the facts on which that statement is based. Likewise, federal regulation 34 C.F.R. 300.153(b) requires that the complaint include an allegation of a violation of Part B and the facts upon which the allegation is based.

For the reasons stated above, this investigator finds that this complaint fails to state a factual basis to support a violation of any IDEA or Kansas special education statute or regulation, specifically including the access provision of 34 C.F.R. 300.613, which requires parental access to education records of their child that are collected, maintained, or used for special education purposes .

Conclusion

The allegation of a violation of federal and/or Kansas special education laws or regulations is not substantiated.

Right to Appeal

Either party may appeal the findings in this report by filing a written notice of appeal with the State Commissioner of Education, Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, Kansas 66612-1212 within 10 calendar days from the date the final report was sent. For further description of the appeals process, see Kansas Administrative Regulations 91-40-51 (f), which is attached to this report.

Mark Ward
Attorney II
Special Education and Title Services
(785) 296-0920
mward@ksde.org
www.ksde.org

Kansas leads the world in the success of each student.

The Kansas State Department of Education does not discriminate on the basis of race, color, national origin, sex, disab age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the nondiscrimination policies: KSDE General Cour Office of General Counsel, KSDE, Landon State Office Building, 900 S.W. Jackson, Suite 102, Topeka, KS 66612, (785) 29 3201.

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

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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).

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 229,
Blue Valley Public Schools: 22FC362-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on November 30, 2022, by attorney Matthew Rogers, on behalf of his clients, Mother and Father. The complaint involves Mother and Father's son, Student. In the remainder of this decision, Mother and Father will be referred to as "the parents," and Student 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 complaint allegation, was issued on December 21, 2022. That Complaint Report concluded that there was no violation of special education statutes and regulations.

Thereafter, Mother and Father filed an appeal of the Complaint Report, through their attorney, Mr. Rogers. Upon receipt of the appeal, an appeal Committee was appointed. The Committee 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.

PRELIMINARY MATTERS

First, no new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report. Accordingly, issues raised in this appeal that were not addressed in the original complaint, such as the alleged failure of the district to implement the student's Positive Behavior Protocol (see page 8 of the parent's Notice of Appeal) will not be addressed by this Committee.

Second, the parents' Notice of Appeal cited the KSDE Special Education Handbook, noting that education records must be maintained for identified students for 5 years after they exit special education services. The context of the special education handbook is, of course, special education. The provision cited in the parent's appeal, is

in Chapter 9 of the special education process handbook and is referring to special education records, and not to all education records. That is clear, not only by the context of the entire handbook, but also by the specific provision in the handbook cited in the parent's appeal, which says: "Federal auditing requires the availability of education records for identified students for 5 years after they exit from special education services (See page 160 of Kansas Special Education Process Handbook)." This refers to requirements of the federal special education grant for states under the Individuals with Disabilities Education Act (IDEA). The grant does not require that all education records be kept for five years, but only requires maintenance of those education records that document compliance with the IDEA. That includes records, for example, to verify that IEPs are developed in accordance with law, that evaluations are administered as required by law, and that disciplinary removals are conducted in the manner specified by law. In using the term "education records" rather than repeatedly specifying "special education records," the statements in the process handbook are, admittedly, too broad. That was an editorial decision, but the context is clearly on only special education records. Moreover, the Kansas Special Education Process Handbook was developed as a general guide for school districts and parents. It is not, and was never intended to be, interpreted as a statement of law or regulation, or official state policy. Accordingly, if the district destroyed the surveillance video, as apparently it has, that destruction is not a violation of the IDEA because: (1) as explained above, the video was not collected, maintained or used by the district in a matter that would make it a special education record; and (2) the federal grant requirement for preservation of any record related to federal grants, which necessarily includes special education records, is a requirement of the Education Department General Administrative Regulations (EDGAR) and not of the IDEA.

Third, with regard to the parents' appeal case citation in Denny v. Bertha-Hewit Public Schools, this federal district court decision from Minnesota is not persuasive. First, it is a district court decision outside of the Tenth Circuit with little (or no) value for precedent in Kansas. Second, and more importantly, it misstates the law when it says: "To be sure, districts must ensure that parents have an opportunity to examine all records relating to their child, including any education records relating to their children that are collected, maintained, or used by the agency (citations omitted)." Special education statutes and regulations simply do not "ensure that parents have an opportunity to examine all records relating to their child (emphasis added)." Even the more general statute, the Family Educational Rights and Privacy Act (FERPA), does not ensure that parents have an opportunity to examine "all records relating to their child." FERPA provides parents with the right to access "education records", but "education records" do not include a number of the kinds of records specified in FERPA regulations, at 34 C.F.R. 99.3. That includes items such as records that are not

maintained by the district or records kept in the sole possession of the maker that are used only as a personal memory aid. Further, even with the misstatement of the law, the Minnesota court concluded that the district in that case did not violate the IDEA. As described more clearly below, the special education regulations give parents a right to access only the education records of their child that the public agency collects, maintains, or uses for special education purposes. This court did not directly address this important component of 34 C.F.R. 300.613.

Fourth, the Notice of Appeal states that the investigator did not follow the required procedure for conducting an investigation because the investigator did not contact the parent for a personal interview. The Notice of Appeal says the investigator erred by not personally interviewing the parent, stating: "The [parents] are the complainants in this case, not their attorney." The Notice of Appeal cites the Kansas Special Education Process Handbook as saying: "the complainant is the person who signs the written complaint." More precisely, on page 173, the Handbook says: "The formal complaint must be in writing and signed by the person or organization making the complaint." This statement was included in the Handbook in recognition of Kansas regulation K.A.R. 91-40-51, which states that a special education complaint to the State Department of Education must include the signature of the complainant. One of this student's parents signed the complaint. Accordingly, this portion of the regulation was completed.

Fifth, in his Notice of Appeal, counsel for the parents cites K.A.R. 91-40-51(c), stating: "At a minimum, each investigation shall include the following: (1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded."

Counsel for the parents asserts that this regulation may only be satisfied when an investigator speaks directly with the parent who is filing the complaint, even in situations where the complaint is filed on behalf of the parent by legal counsel. The Committee disagrees.

The original complaint submitted to KSDE, dated November 30, 2022, says this:

"Dear KSDE, On behalf of [parents], attached please find a formal complaint and associated exhibits. I've cc'd [the parents] on this email. I will send a copy to Ms. Melissa Hillman, Chief Legal Officer for the Blue Valley School District by separate cover."

This correspondence constituted the filing of the complaint, and it was filed by Mr. Rogers in his capacity as attorney "on behalf of" the parents. Indeed, the parents are still the complainants.

The Committee reviewed correspondence between the parent's counsel and the investigator, and makes the following findings: When the investigator contacted Mr. Rogers by e-mail to clarify provisions in the complaint, Mr. Rogers continued to represent his client's interests by providing a written response. At no time did Mr. Rogers indicate that the investigator should directly talk to his client.

As indicated in the Notice of Appeal, K.A.R. 91-40-51(c) says "At a minimum, each investigation shall include the following: (1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded.

In an e-mail, dated December 5, 2022, and addressed to both the parent's attorney and to the general counsel of the school district, the investigator expressed his view that there was no dispute as to the facts regarding the complaint, and asked each if they would be willing to stipulate to facts specified in the investigator's e-mail. In that correspondence, the investigator stated, "If you are not willing to stipulate to any of the facts above, please explain why?"

On December 6, 2022, the parent's attorney replied by e-mail stating:

> "I agree that there is no dispute regarding the underlying facts, and that the dispute is about what the law requires. I agree to the proposed stipulated facts, with two clarifications: (1) this student received two detentions as a result of the incident, and (2) the September 21, 2022 letter also requested "a time for [this student's parents] to view the requested video." *See exhibit 2: Parent's Stipulation.

This correspondence, in which the parent's attorney did provide additional clarification, satisfies the requirement of K.A.R 91-40-51(c) that the investigation include: (1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded.

In the final preliminary matter, on page two of the parents' Notice of Appeal, the parents state that because they were not provided with a copy of the district's response to the complaint, they were "deprived of an opportunity to dispute the facts alleged by the District." The appeal Committee first notes that the investigator did not base his decision on any disputed fact.

Second, K.A.R. 91-40-5(f)(1) says that any agency or complainant may file an appeal within 10 days of the date of the report and that "Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect." Thus, the burden to provide the basis for alleging that the report is incorrect is on the party filing the appeal and doing so within the time period allotted for such filing. There is nothing in

this regulation that requires the Kansas State Department of Education to provide the appealing party an opportunity to respond to the response of the non-appealing party.

Moreover, there is an important distinction between the processes used in a special education complaint investigation as opposed to the more formal due process hearing. The United States Department of Education explained that "The SEA may, in its effort to resolve a complaint, determine that interviews with appropriate individuals are necessary for the SEA to obtain the relevant information needed to make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of part 300. However, such interviews conducted by the SEA, as part of its effort to resolve a State Complaint, are not intended to be comparable to the requirement in section 615(h)(2) of the Act, which provides any party to a due process hearing the right to present evidence and confront, cross-examine, and compel the attendance of witnesses." Federal Register, August 14, 2006, p. 46601).

Accordingly, when a complaint is filed, the State Department of Education conducts an investigation and issues a decision. When a complaint investigator requests information from both parties, as the investigator did in this complaint, the investigator is not required to provide copies of the information received from each party to the other party. The same principal applies when one party has submitted an appeal. When the complaint process has been completed, either party to the complaint may request a copy of the other party's responses, and those requests will ordinarily be approved.

DISCUSSION OF ISSUES ON APPEAL

This complaint involved a single issue:

The school district refused parental access to student records, including: (1) video recording(s) depicting a reported incident between [this student] and another student that the district relied upon in disciplining [this student] and (2) statements, emails, text messages, etc. regarding the alleged incident.

The essential facts of this complaint are uncontested. Both the complaint and the district's response to the complaint, state that: (a) the student who is the subject of this complaint got into a physical altercation with another student at school; (b) the altercation was caught on a surveillance video tape; (c) the student's parents requested that they be given a copy of the tape, or to be able to view the tape; (d) the district refused to do either; and (e) school personnel provided a verbal explanation of the incident to the parents.

In their appeal, the complainants assert that the information in the video was related to special education because the information in the video was related to the child's

disability and its content was important to the parent's right to participate in the IEP process. Therefore, because that information is related to special education, the parents have a right to access it under 34 C.F.R. 300.612.

Even assuming that the information in the video and other information related to the incident may be related to the child's disability and would have been important for the parent's participation in the IEP process, that is not the standard for access under 34 C.F.R. 300.613. For access under 34 C.F.R. 300.613, the information must be in an education record that is "collected, maintained, or used by the agency under this part (emphasis added)." In other words, the analysis does not involve the content of the information, the relationship of the information to the child's disability, or the value of the information to the parents right to participate in the IEP process. Rather, the analysis involves the intention of the public agency for collecting or maintaining the information, and/or how the public agency eventually uses the information. If the reason for the district to collect, maintain, or use information is for a special education purpose, then 34 C.F.R. 300.613 applies. Even if the reason for the district in collecting, maintaining or using information is not for a special education purpose, but the information is eventually used by the district for a special education purpose, under Part B of the IDEA, 34 C.F.R. 300.613 would apply. Conversely, if the reason the district collected, maintained, or used the information is not for a special education purpose under Part B, and the information is never used by the district for a special education purpose, then the access provisions of 34 C.F.R. 300.613 do not apply. In short, what brings student information into the requirements of 34 C.F.R. 300.613 is the manner in which the information is treated by the district. Information does not become subject to the requirements of 34 C.F.R. 300.613 merely because a parent or a district "could" use the information for special education purposes.

The Committee finds that no facts were presented in either the original complaint, or in this appeal, to support a conclusion that information regarding the August 23, 2022, incident was collected, maintained, or used by the district for special education purposes.

On page 7, the Notice of Appeal, states:

"As [parent's] above statement reflects, District and parent IEP Team members have reviewed and discussed surveillance video recordings of behavioral incidents involving [the student] in developing [the student's] IEP and special education services. The August 23, 2022, video is no different and parental access to the August 23, 2022, video is vital to the [parents'] ability to meaningfully participate in that process."

The Appeal Committee recognizes that these parents may have a legitimate special education interest in viewing the content of the August 23, 2022 video. However, the

parents did not provide evidence to the investigator or to this Appeal Committee to support a finding that the August 23, 2022 video, or any other information regarding the August 23, 2022 incident, was collected, maintained, or used by the agency (by USD 229) for discussions at an IEP team meeting, or for any other special education purpose.

CONCLUSION

The Appeal Committee concludes that the complaint report should be, and is, sustained. This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 19th day of January, 2023.

APPEAL COMMITTEE:

Crista Grimwood: Education Program Consultant,
Ashley Niedzwiecki: Attorney,
Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services.

SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #231
ON DECEMBER 7, 2022

DATE OF REPORT: JANUARY 6, 2023

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on December 16, 2022. On December 9, 19, and 30, 2022, the investigator spoke by telephone with Shay Carter, Director of Special Education for the district. On January 4, 2023, the investigator again spoke by telephone with the director. Also participating in the call were Erin Nelson, case manager and special education teacher for the student during the first semester of the 2022-23 school year, and Kelly Edwards, Special Education Coordinator for the district.

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

- IEP for the student dated December 16, 2020
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change in Placement, and Request for Consent dated September 17, 2021
- Prior Written Notice for Evaluation or Reevaluation dated October 18, 2021
- Notice of Meeting dated December 6, 2021
- Notice of Meeting dated December 9, 2021
- Evaluation Team Report dated December 9, 2021
- Meeting Summary Report dated December 9, 2021
- IEP Agenda Guidance dated December 15, 2021
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated December 15, 2021

- Notice of Meeting dated December 17, 2021
- IEP dated December 15, 2021
- Notice of Meeting dated January 24, 2022
- Notice of Meeting dated January 25, 2022
- Notice of Meeting dated April 21, 2022
- IEP Amendment Between Annual IEP Meetings dated May 4, 2022
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated May 4, 2022
- Meeting Summary Report dated May 4, 2022
- Amended IEP for the student dated May 4, 2022
- Email dated December 1, 2022 from case manager to the parents
- Email dated December 6, 2022 from the building principal to the parents
- Email dated December 7, 2022 from the building principal to the parents
- Email dated December 7, 2022 from the student's father to the special education coordinator
- Email dated December 8, 2022 from the coordinator to the student's father
- Notice of Meeting dated December 8, 2022
- Email dated December 9, 2022 from the director of special education to the parents
- Bedford-Nelson Individual Educational Evaluation dated December 13, 2022
- Draft IEP dated December 15, 2022
- Parental Concerns dated December 15, 2022
- IEP notes dated December 15, 2022
- IEP Agenda Guidance for the December 15, 2022 IEP team meeting
- Term grades for the student for the first quarter of the 2022-23 school year
- Service Log for C and G service settings covering the period of August 10 through December 11, 2022
- Bell schedule for the student for the 2022-23 school year
- Sixth grade class schedule
- Daily log form

Background Information

This investigation involves a twelve-year-old boy who is enrolled in the sixth grade in his neighborhood middle school. The student has been enrolled in the district since Kindergarten. He was determined to be eligible for and in need of special education under the category of Learning Disability when he was in second grade. He was also diagnosed with ADHD in 2019.

The student has participated in twice weekly outside tutoring secured by the parents since second grade.

Issues

In their complaint, the parents identified two concerns.

Issue One: With limited communication with the IEP team, the parents cannot adequately monitor, remain informed about, or direct actions related to the student or his IEP.

Applicable Statutes and Regulations

Decisions regarding the provision of special education services to a student are made by an IEP team. To strengthen the role of parents in the special education process, Congress mandated that districts afford parents the opportunity be a part of the IEP team in making decisions regarding the development of an IEP for their child or the provision of a free appropriate public education to the child.

Special education statutes and regulations do not address the topic of communication between the parent and district staff outside of the IEP process. Those policies and practices are established by the district.

The Office of Special Education Programs (OSEP) – the office in the United States Department of Education that writes special education regulations – has provided guidance regarding whether a parent has a legal right to require an IEP Team member to participate in an IEP Team meeting. OSEP opines that it is important to emphasize that it is the local education agency (LEA) that determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. A parent does not have a legal right to require other public agency personnel to attend an IEP Team meeting if they have not been designated by the LEA to be on the IEP Team. (See Federal Register, Authe studentt 14, 2006, on page 46674.)

Parents' Position

The parents contend that their ability to communicate with school staff regarding the implementation of the student's IEP has been impeded. Specifically, the parents assert that the building principal would not, during the 2022-23 school year, allow the student's father to speak by telephone with the student's IEP case manager for the 2021-22 school year. The parents state that the building principal directed staff to stop all email communication with the parents regarding the student and the IEP paperwork associated with the student's annual IEP review. It is the position of the student's father that if he is not allowed to speak by telephone with the previous case manager, he would "have no choice but to ask that she attend the IEP meeting to answer questions."

Investigative Findings

On December 1, 2022, the IEP case manager for the student sent the parents a notice of meeting proposing an IEP Team meeting on December 12, 2022. The case manager noted that after progress monitoring was completed on December 2, 2022, the parents would be sent digital and hard copies of the monitoring report. Additionally, a draft copy of an IEP would be sent to the parents on December 5, 2022.

On December 6, 2022, the building principal sent an email to the student's father stating,

> *"I did speak with [the student's 5th grade special education teacher] regarding your request for a phone call. She is currently not [the student's] case manager and does not directly work with [the student.]. Please submit any specific questions and we will be glad to respond."*

On December 7, 2022, the building principal sent an email to the student's father stating,

> *"I am directing all [middle school] staff to stop any email dialog regarding [the student] and his IEP paperwork. On November 29, 2022, [the case manager] started the process to complete this annual IEP process and related paperwork. Little progress using email has been made related to setting a meeting date.*
>
> *I am making time available on Friday, Dec. 9, 2022, from 8:30 – 10 or 1 – 2:30 to meet in person…at [the middle school]. [The school psychologist] and I will be present. Our goal is to move the IEP paperwork process forward and set a meeting date. If you are unable to attend, please direct all communication to…[the] sped coordinator and she will be your contact moving forward.*
>
> *[The middle school] is committed to daily instruction and full implementation of [the student's] IEP. We are achieving success in this area but we are not successful in completing the related IEP paperwork and setting a meeting date."*

In response, the parent sent an email to the special education coordinator, writing

> *"We received the last data requested only this a.m. from the case manager; our internal review should be done within the next couple days. Please prepare a 10 day notice dated today; we have availability to attend on the following dates:*
>
> *12/15, between noon and 3 pm (we'd waive our 10 day)*
>
> *12/16, between noon and 3 pm (we'd waive our 10 day)*

12/19 or 12/20, between 10 am and 3 pm
We will require the meeting be held via zoom so that our advocate may attend as well.

In addition to our current "team," I request the following personnel attend. I would hope to knock out any input required of these additional attendees first thing – so I wouldn't expect that part to take too long.

- *[special education coordinator]*
- *[case manager for the student for the 2021-22 school year]*
- *[school psychologist for the 2021-22 school year]*
- *[general education teacher for the student during the 2021-22 school year]*
- *[current general education teacher for the student]"*

On December 8, 2022, the special education coordinator sent an email to the student's father, writing

"This morning, I have sent an invitation to [the fifth-grade resource room teacher], [the school psychologist serving the middle school during the 2021-22 school year], and [the student's fifth grade general education teacher] to attend the IEP meeting for [the student]. I will also invite…the [student's current] General Education Teacher to attend the meeting. Per your dates, I have it scheduled for December 15, 2022 at 12:00 at [the middle school]. I have included a Notice of Meeting for you at the bottom of this email. In your previous email, you indicated you would be willing to waive your 10 days notice.

Currently, our zoom meetings are only for 40 minutes, so we may need to restart the zoom meeting, if we run longer than 40 minutes.

I have also included, in this email, a Release of Information. Please fill out the attached release for the advocate you are bringing with you to the meeting. We will need this back prior to the start of the IEP meeting, for your advocate to attend.

…After you have had the opportunity to review the draft IEP, please let me know if there are questions you have prior to the meeting so we can work to have answers for you at the meeting."

In preparation for the December 15, 2022 IEP team meeting, the parents submitted a written statement outlining their concerns.

Both parents participated in the December 15, 2022 IEP team meeting via Zoom as did the individual who recently conducted an outside evaluation of the student. That individual reported on her evaluation and acted in the role of advocate for the student and parents. Also participating in the meeting were the following:

- the seventh-grade special education teacher who would begin serving as case manager for the student;
- the sixth-grade special education teacher who had been serving as case manager and who has also been providing special education services to the student;
- the building principal;
- the school psychologist assigned to the building for the 2022-23 school year;
- three of the student's sixth grade general education teachers; and
- the middle school special education coordinator.

Neither the student's fifth grade teacher, the school psychologist who served the school during the 2021-22 school year, nor the student's fifth grade case manager were present for the meeting, but all provided written statements which had been sent to the parents prior to the IEP meeting. The student's current sixth grade social studies teacher did not attend the meeting but did submit a written statement which was provided to the parents prior to the meeting.

In a telephone call with the investigator on December 19, 2022, the student's father confirmed that he and the student's mother participated in the December 15, 2022 IEP team meeting and acknowledged that written statements were provided by members of the student's 2021-22 IEP team who did not attend in person.

In a telephone call with the investigator on December 19, 2022, the special education director stated that the flow of email and written correspondence between the parent and staff has been reinstated. The building principal and special education coordinator are to be copied on all emails between the parties. Telephone calls are to be scheduled at a time that will allow the building principal to be present.

A second IEP team meeting has been scheduled for January 19, 2023.

Summary and Conclusions

While the building principal did, on December 7, 2022, place boundaries on email communication between the parents and building staff, special education statutes and regulations do not prohibit the imposition of such limits so long as they do not keep parents from having the opportunity be a part of the IEP team in making decisions regarding the development of an IEP for their child or the provision of a free appropriate public education to the child.

Special education statutes and regulations establish the required members of a student's IEP team but allow districts – not parents – to determine who will fill the roles for the public agency's required participants at the IEP Team meeting. The district determined who would attend the December 15, 2022 IEP team meeting and fill the required school district roles for that meeting. All required roles were filled. Input was solicited from other individuals identified by the parents, and written comments from those parties were provided to the parents prior to the meeting.

Because the imposition of constraints on email communication between the parent and school staff did not impede the parents' participation in the student's December 15, 2022 IEP team meeting, a violation of special education statutes and regulations is *not* established on this issue.

Issue Two: The district has failed to implement 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.

Parent's Position

The parents state that the district has failed to provide a 20-minute block of special education services at the time of day previously agreed to by the IEP team. Specifically, the parents contend that the district agreed to provide services to the student at the beginning of his school day, during announcements rather than disrupting the student's core instruction time. It is the position of the parents that there have been several weeks during the 2022-23 school year when these 20 minutes of service were not provided at all or were delivered during a time that required the student to be removed from core instruction.

District's Position

It is the position of the district that no accurate accounting of the provision of services to the student is available, and that the data developed by staff to reflect these services is of questionable accuracy. The district acknowledges that some of the services identified by the parents in their complaint have not been provided.

Investigative Findings

The IEP for the student which was in place at the time this complaint was filed was developed over two meetings on December 15, 2021 and January 27, 2022. According to meeting notes from the December 15, 2021 meeting, the student's father "asked for clarification about service minutes and asked about increase in service minutes. [The student's case manager] shared that [the student] is making progress in his IEP goals with the current service minutes and is in the least restrictive environment. Parents requested an increase of service minutes to meet [the student's] needs."

Under his December 16, 2020 IEP, the student had been receiving the following services.

- 90 minutes of special education services in the general education classroom, five days a week;
- 30 minutes of special education services in the special education classroom 4 days per week, and an additional
- 30 minutes of special education services in the special education classroom 5 days a week.

At the December 2021/January 2022 annual review meetings, the IEP team determined that special education services for the student should be increased to

- 90 minutes of direct special education services in a regular education classroom for five days a week; and
- 80 minutes of direct special education services outside the regular education classroom for 5 days a week.

According to the "Service Delivery Statement" of the student's December 15, 2021 IEP, the student would receive

"90 minutes, 5 days a week, every week of in class support in the general education classroom for reading and math support [and] 80 minutes, 5 days a week, every week of specialized instruction in math and reading in the special education classroom…"

According to a prior written notice form signed electronically by the student's father on February 11, 2022,

"For the duration of the IEP while school is in session, the student will receive special education services as a student with a specific learning disability in reading. The student will receive 80 minutes a day, 5 days a week of specialized instruction in the special education classroom for reading and math. The student will receive 90 minutes a day, 5 days a week of general education support in the area of reading and math…

Special education services will be provided away from general education peers in order to learn and practice skills in a small group away from distractions…"

In response to this complaint, the district provided the investigator with a daily schedule for sixth grade students and a summative service log which reflects the provision of special education services to the student from the beginning of the school year through December 12, 2022. No raw data or working records regarding the delivery of services was provided by the district.

In a written position statement and in verbal remarks to the parent and the investigator, the district has indicated that it has questions regarding the accuracy of the service log and no way to accurately determine when services were provided to the student. The parents also did not keep a formal record of the student's reports of missed services.

According to the service log, the student has received 30 minutes twice a day of special education service in a special education setting. These two blocks were provided at the following times:

- 9:10 to 9:40 AM – After core instruction in math has been provided to the class as a whole, students are provided with a variety of individualized instructional opportunities during the first "Tier" time of their school day. Some students remain in the classroom for that instruction. Others, including this student, move to other locations for targeted instruction. During this time period, the student moved to the special education setting where he worked on his math goal.
- 1:05 to 1:35 PM – During the second classroom "Tier" period – this one following whole group classroom instruction in reading – the student again moved to the special education classroom where he worked on reading goals.

For each of these sessions, the student was to come to the resource room on his own. If he did not come at the scheduled time, staff would go to his classroom to get him.

According to the service log, the student has received another 20 minutes of direct special education services in a special education setting at a variety of other times during the 2022-23 school year. In a telephone conference call with the investigator on January 4, 2023, the first semester case manager stated that, from the start of the school year until October 17, 2022, these additional minutes of service were delivered at the start of the school day during the time that announcements were read and the class settled in for the day. The case manager told the investigator that the student sometimes arrived at school early and came to the resource room before school started in order to begin his work there.

Beginning October 17, 2022, additional service delivery time options were identified during the school day for the student's 20-minute sessions. Those options included the following:

- 9:40 to 10:00 AM, during classroom science instruction;
- coming 5 minutes early to the 1:05 pull-out session; or
- 12:20 to 12:40 PM, during a core instruction period.

If any of these time slots were to be used on a given day, the case manager or a paraeducator would go to the student's classroom to get him.

These additional sessions were generally provided by the case manager in her special education resource room, though some sessions were led by a paraeducator. According to the case manager, there were occasions when neither she nor her classroom were available, and a paraeducator would take the student to an alternate location for his 20-minute session.

The student was absent 4 days between the start of the 2022-23 school year and December 12, 2022. According to the summative service log, the required minutes of special education services in special education settings were provided every day that the student was in school during that period except for one day when the student was on a field trip (October 6, 2022) and one day (October 11, 2022) when the 20-minute block of resource services was not provided.

As stated in the student's December 15, 2022 IEP,

> *The school is unable to provide regularly scheduled special education and/or related services in the following situations: inclement weather closures, scheduled school closures, unforeseen emergencies, student absences, school field trips…"*

On 10 days, the student was involved in testing during his time in the resource room. Six of these 10 testing days were for scheduled MAP testing. The student was involved in math testing on three other days. On one other day, two of the student's service blocks were used to provide accommodations for a classroom test.

The "Program Modifications and Supports" section of the student's December 15, 2021 IEP states that "for all district, state, and classroom assessments," the student is to be allowed to go to an alternate setting where additional accommodations such as reading the text aloud can be provided.

In addition to the delivery of special education services in a special education setting, the student also received a total of 90 minutes of special education services in the general education setting in two separate 45-minutes blocks during the school day:

- 8:25 to 9:10 AM, during core math instruction; and

- 10:30 to 11:15 AM, during a core reading instruction period.

These services were provided by either the case manager or a paraeducator.

The summative service delivery log provided by the district shows that only 60 minutes of special education support in the general education setting was provided on 6 days between the start of the school year and December 12, 2022 – a loss of 180 minutes of services. Additionally, on three days, the student was unavailable to receive general education classroom support because he was taking a test outside of the classroom.

Summary and Conclusions

At the annual IEP review for the student completed on January 27, 2022, special education services to the student were increased from a total of 720 minutes per week to a total of 850 minutes per week (an increase of approximately 18%). The parents were provided with prior written notice of this change in services.

The student's December 15, 2021 IEP (finalized in January 2022) did not specify when during the school day these services were to be provided, but required only that the student receive 90 minutes per day of special education service in the general education setting and 80 minutes per day of special education services in a special education setting.

Because the student's December 15, 2021 IEP did not require that the student be provided with a 20-minute block of direct special education services either before the school day or during the initial portion of the school day outside of core instruction time, a violation of special education statutes and laws is ***not*** substantiated on that aspect of this issue.

The district considers the summative service log which it provided to document the provision of special education services to this student to be of questionable accuracy. The district acknowledges that it failed to provide some of the special education services that are required by the student's IEP but did not provide any alternative means for the investigator to use when considering the district's provision of services to the student. While the parents assert that the student was not provided with all of his services on a number of days, they too provided no record of those missed services for the investigator to consider.

It is clear from the summative service log that on October 11, 2022, the 20-minute service block was not provided.

The summative service log shows that the student received only 60 minutes of special education services in the general education setting on 6 days rather than the 90 minutes required by the student's December 15, 2021 IEP.

On 10 days, at least part of the student's direct service time was focused on the provision of testing accommodations required by the student's December 15, 2021 IEP. Six of these 10 testing days were for scheduled MAP testing. Math testing occurred on three days. On one other day, two of the student's service blocks were used to provide accommodations for a classroom test.

The student's December 15, 2021 IEP does not explain how the implementation of testing accommodations will be operationalized. The IEP does not explicitly state whether or not special education service time in the special education setting will be used to provide such accommodations or whether time spent on the delivery of a testing accommodation will or will not be in addition to direct instructional time. However, the provision of an accommodation is the provision of a special education service.

Because the student was not provided with all of the required special education services outlined in his December 5, 2021 IEP, a violation of special education statutes and regulations is substantiated on this aspect of this issue.

Therefore, a total of 290 minutes of compensatory special education services will be required:

- 20 minutes for the failure to deliver that block of special education services in the special education setting on October 11, 2022;
- 180 minutes for the failure on 6 days to deliver 30 of the 90 minutes of special education services in the general education setting; and
- an additional 90 minutes of compensatory service to address other lapses in service acknowledged by the district.

Additional Comments

According to notes from the December 15, 2022 IEP team meeting, the district shared with the parents a sample "communication log" which the district proposed to send home to the parents on a daily basis. The form would document the delivery of special education services to the student and would reflect when special education services were delivered, who delivered the service, and a description of the service.

According to the director of special education, staff would begin using the aforementioned form at the start of the second semester.

Additionally, the director told the investigator that the student's special education services will be scheduled and provided at consistent times for the second semester.

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 #231 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) Within 10 calendar days of the date of this report, submit to SETS for approval a plan for the provision of 290 minutes of compensatory special education services to this student.
    a) Within 5 days of receipt of approval for the plan described under Corrective Action 1, the district shall schedule a meeting with the parents to present the plan.
    b) The parents shall have the option of accepting all or part of the proposed plan and shall notify the district in writing of their decision within 5 calendar days of the meeting described above under Corrective Action 2) a).
    c) The district shall notify SETS of the parents' decision no later than 5 calendar days after receipt of the parents' written response.
3) By no later than the 5th of each remaining month in the 2022-23 school year, USD #231 shall submit to SETS a summative report regarding the provision of special education services to the student.
4) If at any point prior to the end of the 2022-3 school year, changes are made to the services contained in the student's IEP, USD #231 shall notify SETS of those changes and alter monthly reporting of service delivery to comport with those changes.
5) Further, USD #231 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 #408
ON NOVEMBER 28, 2022
DATE OF REPORT JANUARY 9, 2023

This report is in response to a complaint filed with our office on behalf of Student A and Student B by their parents, The parents. In the remainder of the report, Student A will be referred to as "student A" and Student B will be referred to as "student B". The mother will be referred to as "the mother" and The father will be referred to as "the father". Together, The parents will be referred to as "the parents" or "the complainants".

The complaint is against USD #408, Marion-Florence Public Schools, who contracts with the Marion County Special Education Cooperative (MCSEC) to provide special education and related services to students residing within the district. In the remainder of the report, "USD #408," "the "school," the "district", and 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 initially received the complaint on November 28, 2022 and the 30-day timeline ends on December 28, 2022. However, the timeline to investigate the complaint was extended until January 9, 2023 due to the district's almost two week holiday break when school staff were unavailable to participate in the investigative process.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the parents by telephone on December 2, 2022 to clarify the issues of the complaint. The Complaint Investigator interviewed the parents by telephone on December 13, 2022.

USD #408 made the following administrative staff available for telephone interviews on December 16, 2022:

- Robert Diepenbrock, Director of Special Education for MCSEC
- Jeremy Gooch, Assistant Director of Special Education for MCSEC
- Justin Wasmuth, Principal of Marion Elementary School

USD #408 made the following staff at Marion Elementary School available for telephone interviews on December 20, 2022:

- Rebecca Hofer, First Grade Teacher
- Denise May, First Grade Teacher
- Cierra Goodwin, Special Education Teacher

In addition, the Complaint Investigator spoke to Mr. Lee Leiker, Superintendent for USD #408, on January 6, 2022.

In completing this investigation, the Complaint Investigator reviewed the following documentation provided by the complainants and the district:

- KSDE Teacher License for Ms. Goodwin to teach elementary education in grades Kindergarten through sixth grade dated May 27, 2021
- High Incidence Special Education Initial Waiver Approval Letter for Ms. Goodwin dated October 11, 2022 signed by Randall Watson, Kansas Commissioner of Education
- Plan of Study: PK-12 High Incidence Program at Fort Hays State University for Ms. Goodwin
- Emporia State University Transcript for Ms. Goodwin showing she graduated with a bachelor's degree in education on May 11, 2019
- MCSEC Application and Professional Development Record for Lisa Unruh, Paraprofessional
- MCSEC Application and Professional Development Record for Lena Hall, Paraprofessional
- MCSEC Application and Professional Development Record for Robin Arocha, Paraprofessional
- MCSEC Application and Professional Development Record for Echo Smith, Paraprofessional
- The Individualized Education Program (IEP) for Student A dated April 13, 2022

- Multidisciplinary Team Meeting Notes dated April 13, 2022 for Student A
- The IEP for Student B dated April 13, 2022
- Multidisciplinary Team Meeting Notes dated April 13, 2022 for Student B
- IEP Amendment Form for Changes Not Requiring a Full IEP Team Meeting for Student B dated August 24, 2022
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, And/Or Request for Consent dated August 24, 2022 and signed by the parent on August 30, 2022
- The 2022-23 School Calendar for USD #408
- K-1 Resource Schedule for 2022-23 School Year showing schedules for Ms. Goodwin and the four paraprofessionals
- Lesson Plans dated December 12 through December 16, 2022 written by Ms. Goodwin
- IEP Goal Progress Reports for Student A for the IEP dated April 13, 2022
- IEP Goal Progress Reports for Student B for the IEP dated April 13, 2022 and amended on August 24, 2022
- MCSEC Interlocal Response to Allegations for USD #408 written by Dr. Diepenbrock dated December 12, 2022
- Educational Software for Guiding Instruction (ESGI) for Math Score Report for Student A dated October 24, 2022
- MCSEC Confidentiality Agreement signed by Ms. Goodwin on July 1, 2022
- Email from father to Robert Diepenbrock dated September 16, 2022 at 1:56 pm
- Dr. Diepenbrock's notes of meeting with father (undated)
- Email from Ms. Goodwin to Dr. Diepenbrock and Larry McManaman dated September 19, 2022 at 8:46 pm, including her professional notes with entries dated August 22-26, September 12, September 14, September 15, September 16, September 19, 2022
- Email from Dr. Diepenbrock to Ms. Goodwin dated September 21, 2022 at 9:26 am
- Email from Mr. Wasmuth to Dr. Diepenbrock and others dated September 21 at 10:48 am
- Emails confirming meeting time on September 21, 2022 among Ms. Goodwin, Mr. Wasmuth, Dr. Diepenbrock and Larry McManaman, School Psychologist

- Email from Mr. Wasmuth to Mr. Gooch and Dr. Diepenbrock dated September 23, 2022 at 3:40 pm
- Email from Mr. Gooch to Mr. Wasmuth and Dr. Diepenbrock dated September 23, 2022 at 2:51 pm
- Email from the mother to Ms. Goodwin and others dated September 28, 2022 at 8:05 am
- Email from Ms. Goodwin to parents and others dated September 29, 2022 at 3:53 pm
- Email from mother to Ms. Goodwin and others dated September 29, 2022 at 5:08 pm
- Areas of concern for SPED given to Adm (October 27 2022, October 28, 2022)
- Documentation of conversations and interactions by parents (Entries dated: September 15, September 19, September 28, September 30, October 3, October 24, October 25, October 26, October 27, October 31, November 3, November 6, November 21, 2022)
- Documentation of interactions and classroom occurrences by C. Goodwin (Entries dated August 22, September 12, September 14, September 15, September 16, September 19, September 20, September 21, September 22, September 26-30, October 6, October 13, October 20, October 24, October 25, October 26, October 26, November 21, 2022)
- Progress assessment for Student A from Rebecca Hoffer dated October 24, 2022
- Mr. Wasmuth's notes from Student A's Parent Teacher Conference on October 24, 2022 from 2:50-3:47 pm
- Mr. Wasmuth's notes from Student B's Parent Teacher Conference on October 24, 2022 from 3:50-4:25 pm
- Formal (announced) Observation of Ms. Goodwin Report by Mr. Gooch dated October 25, 2022
- Email from mother to Ms. Goodwin and others dated October 27, 2022 at 9:07 pm
- Email from Ms. Goodwin to parents and others dated October 28, 2022 at 9:04 am
- Dr. Diepenbrock's notes of meeting with father and Mr. Gooch dated October 27, 2022

- Dr. Diepenbrock's notes of meeting with TASN Consultant (Doug) dated October 27, 2022
- Robert Diepenbrock's copy of parents areas of concern dated as following October 27, 2022 meeting
- Letter from Dr. Diepenbrock to Parents dated October 31, 2022
- Email from mother to Lee Leiker, Superintendent for USD #408, and Mr. Wasmuth dated October 28, 2022 at 8:45 am
- Email from Mr. Leiker to mother dated October 28, 2022 at 5:17 pm
- Email from mother to Dr. Diepenbrock dated November 3, 2022 at 5:11 pm
- Email from Ms. Goodwin to parents and others dated November 6, 2022 at 9:53 am
- Email from mother to Ms. Goodwin and others dated November 7, 2022 at 7:56 am
- Email from Ms. Goodwin to parents and others dated November 7, 2022 at 1:43 pm
- Email from mother to Ms. Goodwin and others dated November 7, 2022 at 2:35 pm
- Email from Dr. Diepenbrock to parents and others dated November 7, 2022 at 8:21 am
- Email from Mr. Wasmuth to Dr. Diepenbrock, parents and others dated November 7, 2022 at 9:13 am
- Email from father to Dr. Diepenbrock and others dated November 7, 2022 at 1:11 am
- Email from Dr. Diepenbrock to father and others dated November 8, 2022 at 12:42 pm
- Email from father to Dr. Diepenbrock and others dated November 10, 2022 at 8:59 pm
- Email from Dr. Diepenbrock to parents and others dated November 17, 2022 at 11:44 am
- Email from father to Dr. Diepenbrock and others dated November 22, 2022 at 7:36 am
- Email from Dr. Diepenbrock to Parents dated December 1, 2022 at 3:56 pm
- Observation of Ms. Goodwin Report by IEP Specialist, Regina Kimbrel, dated November 14, 2022

- Observation of Ms. Goodwin Report by Reading Specialist, Eileen Hiebert, dated November 3, 2022
- Observation of Ms. Goodwin and Classroom by Briana Jamieson, Social Emotional Learning (SEL) and Behavior Specialist dated November 15, 2022
- Ms. Goodwin Plan of Improvement dated November 16, 2022
- Email from Mr. Wasmuth to Matthew Fox, Dr. Diepenbrock, Ms. Goodwin and Mr. Gooch dated November 16 2022 at 12:48 pm
- Email from Dr. Diepenbrock to Mr. Wasmuth and others (above) dated November 16, 2022 at 2:13 pm
- Email from Matthew Fox to Dr. Diepenbrock and others (above) dated November 16, 2022 at 2:29 pm
- Email from Mr. Wasmuth to Matthew Fox and others (above) dated November 16, 2022 at 2:34 pm
- Letter from Dr. Diepenbrock to Ms. Goodwin requesting information for complaint dated December 5, 2022.
- Email from Ms. Goodwin to Dr. Diepenbrock replying to his letter dated December 5, 2022 at 10:50 pm
- Ms. Goodwin notes of Student A's spelling and reading word data dated August 26, September 2, September 9, September 14, September 16, September 22, September 23, October 7, October 11, October 27, 2022
- Email dated January 5, 2023 at 6:04 p.m. written by the father to the complaint Investigator regarding Student A's IEP goal progress report for second quarter…

Background Information

This investigation involves a two six-year old first grade students enrolled at Marion Elementary School in USD #408. The students are a fraternal set of twins, a brother and sister, who live with their adoptive parents in USD #408. Both students have been diagnosed with Post-traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD). The children are prescribed medication as well as receive behavioral, psychological, occupational, and neurological therapy on a weekly basis to address emotional and behavioral dysregulation concerns.

The students were initially evaluated for special education and related services at the age of three. The students were found eligible under the exceptionality category of

Young Child with a Developmental Delay (YCDD) and received early childhood special education instruction and speech therapy until they started kindergarten at Marion Elementary School during the 2021-22 school year.

The students continued to receive special education instruction in both the general education and special education classrooms as well as speech therapy until the end of kindergarten when Student B was dismissed from speech therapy. Triennial reevaluations were conducted and the students were found to continue to be eligible for special education and related services during first grade and identified as eligible under the exceptionality category of Other Health Impaired (OHI). USD #408 has continued to make special education and related services available to both students through the current date.

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 five issues that were investigated.

> ISSUE ONE: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide specialized instruction by appropriately trained and certificated staff, specifically the K-1 special education teacher and the special education paraprofessionals instruction Student A, during the 2022-23 school year.

Positions of the Parties

The complainants alleged that Student is being provided the majority of his specialized instruction from the paraprofessionals in both the general education and special education classrooms. The parents believe that Student A's special education teacher does not have the training or credentials to effectively teach their child. They indicated

the special education teacher is not addressing the educational standards and goals set by the state nor is she providing enough direct instruction to the student.

The district responded that all staff working with the student hold the appropriate credentials and have received the required training necessary to meet the state requirements to provide special education services to the students.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The IEP in effect during the 2022-23 school year for Student A was developed on April 13, 2022 with the parents in attendance. This IEP requires specialized instruction in the special education setting for reading and writing for 135 minutes per day. In addition, the IEP requires 120 minutes per day of paraprofessional support for math and social sciences in the general education classroom.
Interviews and documentation found these special education services were provided by the following staff during the first semester of the 2022-23 school year:

- Cierra Goodwin, Special Education Teacher
- Echo Smith, Paraprofessional
- Lena Hall, Paraprofessional
- Robin Arocha, Paraprofessional
- Lisa Unruh, Paraprofessional

Ms. Goodwin received a bachelor's degree in education from Emporia State University on May 11, 2029. She currently holds a license in Kansas to teach elementary education in grades kindergarten through sixth grade. USD #408 sought and received approval for an initial waiver for Ms. Goodwin to teach high incidence special education in grades pre-kindergarten through 12th grade during the 2022-23 school year.

Interviews and documentation show that Ms. Goodwin is currently enrolled in special education classes and is working towards her Master's degree in Education.
Bob Diepenbrock, Special Education Director at MCSEC, reported that KSDE requires paraprofessionals to have received either a high school diploma or General Equivalency Diploma (GED) and participate in ongoing tiered levels of professional

development depending upon years of employment in compliance with Kansas personnel standards.
Ms. Smith originally submitted an application to be employed as a paraprofessional at MCSEC on November 19, 2021. She was hired the following year and her four hour orientation was provided on March 7, 2022. She received nine additional hours of training during the spring of 2022 and has currently completed 20.75 hours of training during the 2022-23 school year.

Ms. Hall originally submitted an application to be employed as a paraprofessional at MCSEC on October 21, 2020. Orientation was provided on October 22, 2020 and she received a total of 21 hours of training during the 2021-22 school year. Ms. Hall has currently completed 18 hours of training during the 2022-23 school year.

Ms. Arocha originally submitted an application to be employed as a paraprofessional at MCSEC on June 13, 1999. She received her original orientation on August 7, 1995 and has been employed as a paraprofessional in MCSEC since that time. She received a total of 21 hours of training during the 2021-22 school year and has currently completed 18 hours of the required training during the 2022-23 school year.

Ms. Unruh originally submitted an application to be employed as a paraprofessional at MCSEC on November 8, 2021. Orientation was provided on November 12, 2021 and she received a total of 24.50 hours of training during the 2021-22 school year. She has also completed 12.75 hours of training during the first half of the 2022-23 school year.

Applicable Regulations and Conclusions

Federal regulations, at 34 C.F.R. 300.156(a), require public agencies to ensure that children with disabilities are provided special education and related services by appropriately and adequately prepared and trained personnel who have the content knowledge and skills to serve children with disabilities.

Federal regulations, at 34 C.F.R. 300.156(c), requires that each special education teacher providing special education services has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator), or passed the State special education teacher

licensing examination, and holds a license to teach in the State as a special education teacher, and holds at least a bachelor's degree.

According to the 2022-23 Kansas Special Education Reimbursement Guide for State Categorical Aid, the minimum requirements to be employed as a special education paraprofessional include being a high school graduate or holding a General Equivalency Degree (GED) certificate, and completing an orientation session addressing confidentiality, the services to be provided, and the policies and procedures of the local education agency concerning special education.

In addition, there is a tiered paraprofessional training requirement that describes the number of hours of professional development that must be provided to persons employed as paraprofessionals based on the number of years of experience working as a paraprofessional. Paraprofessionals with three or fewer years of experience must have a minimum of 20 hours annually while paraprofessionals with more than three years of experience must have 10 hours of professional development annually.
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In this case, the special education teacher working with Student A holds a bachelor's degree and was granted an initial waiver to teach high incidence special education during the 2022-23 school year by the state of Kansas. As such, she meets the requirements to be assigned as a special education teacher.

Each of the four paraprofessionals working with Student A have a high school diploma and have participated in more than the minimum number of hours of professional development during the previous school year. Documentation shows they have obtained at least half of the required professional development for the 2022-23 school year during the first semester.

Based on the foregoing, a violation of the IDEA requirements and Kansas special education regulations to have appropriately trained and certificated staff is not substantiated.

ISSUE TWO: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEPs for Student A and Student B as written, specifically the special education instruction for reading and writing, to ensure both students are making progress towards their IEP goals during the 2022-23 school year.

Positions of the Parties

The complainants alleged that Student A is not receiving the required special education services for reading, writing and math from the special education teacher. The parents believe Student A is being provided the majority of his specialized instruction from the paraprofessionals in both the general education and special education classrooms. Direct instruction by the special education teacher is provided for less than half of the time the student is in the special education classroom with the balance of the time being spent on "independent task boxes." The parents are also concerned that his special education services are sometimes provided in the hallway.

The parents also reported that Student B only receives specialized instruction for writing two to three days per week due to the special education teacher working with and assessing more than one student during the same timeframe.

The district responded that the IEPs of both students are being implemented as written by the special education teacher and the four paraprofessionals assigned to work with the students. USD #408 acknowledged that special education paraprofessionals provide support and instruction to Student A but believe this is allowed under Kansas regulations. Dr. Diepenbrock stated that MCSEC regularly assigns paraprofessionals to provide support in both the general and special education classrooms to students with IEPs in order to provide the necessary special education services in the least restrictive setting (LRE). Dr. Diepenbrock also indicated that paraprofessionals work under the direct supervision of appropriately certificated staff.

Ms. Goodwin stated that Student A receives reading instruction in the special education setting on a daily basis in small groups of between two and five additional students while Student B receives writing instruction with only one other student.

Ms. Goodwin explained that students are seated around a work table and spend time during each lesson receiving direct instruction from the special education teacher or paraprofessional as well as having opportunities for guided practice and independent practice for all skills monitored by the special education teacher or paraprofessional.

Ms. Goodwin acknowledged special education services have been provided in multiple locations throughout the school building but these services are provided in in individual or small group settings away from their first grade general education classmates.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The findings from Issue One are incorporated herein by reference.

The IEP in effect during the 2022-23 school year for IEP for Student A was developed on April 13, 2022 with the parents in attendance. This IEP requires specialized instruction in the special education setting for reading and writing for 135 minutes per day. In addition, the IEP requires 120 minutes per day of paraprofessional support for math and social sciences in the general education classroom. Finally, the IEP requires speech/language therapy for 20 minutes on two days per week.

The K-1 Resource Schedule shows Ms. Goodwin provides special education services to Student A in the special education setting for reading between 9:55 a.m. until 11:55 a.m. and for writing between 1:00 p.m. until 1:15 p.m. for a total of 135 minutes of specialized instruction on a daily basis.

The schedule shows Robin Arocha is assigned to support Student A in Mrs. Hoefer's first grade classroom for math between 1:20 p.m. until 2:10 p.m. and for social sciences between 2:30 p.m. and 3:15 p.m. for a total of 95 minutes per day of special education support in the general education setting.

Student A's IEP includes five academic goals and two speech/language goals. The IEP goal progress reports show he made progress on all but one goal in October 2022. The benchmark for this goal was to read 19 of the 40 Dolch sight words; however, the student was only able to read 18 of these words.

During the most recent reporting period in December 2022 according to the IEP Progress Report, the student continued to make progress on all but one goal. The benchmark for this goal was to spell 32/52 spelling sound correspondences. The classroom teacher assessed this goal finding 30/52 spelling sounds correct while the special education teacher reported finding 32/52 correct.

The IEP in effect during the 2022-23 school year for Student B was also developed on April 13, 2022 with the parents in attendance. However, this IEP was amended on August 24, 2022 through an agreement between the parents and the LEA representative.

Beginning on August 15, 2022, the services required by the amended IEP included 15 minutes per day of specialized instruction in writing in the special education setting and 240 minutes per day of special education staff support in the general education setting as follows: 60 minutes for Reading/Language Arts, 60 minutes for math, 60 minutes for social sciences (Discovery Time), 30 minutes of MTSS [Multi-tiered Systems of Support], and 30 minutes for Small Group Pathways.

The parents were provided with a PWN for a material change of services and a substantial change of placement on August 24, 2022 and written parent consent for these changes was obtained on August 30, 2022. However, according to the amended IEP, the material change in services and the substantial change of placement occurred beginning on August 18, 2022, which was the first day of the 2022-23 school year.

The K-1 Resource Schedule shows Student B received specialized instruction in writing from Ms. Goodwin between 1:00 p.m. until 1:15 p.m. in the special education setting. The schedule shows that Lena Hall is assigned to support Student B in the general education setting between 9:55 a.m. until 10:50 a.m. for a total of 55 minutes per day of specialized instruction and in reading; between 1:20 p.m. and 2:10 p.m. for a

total of 50 minutes per day of specialized instruction in Math; and between 2:30 p.m. and 3:15 p.m. for 45 minutes per day of specialized instruction in social sciences. The schedule does not show Student B receives special education staff support for MTSS or Small Group Pathways.

Student B's IEP includes five academic goals. The IEP goal progress reports show she made progress on all but one goal in October 2022. The benchmark for this goal was to read 21 of the 40 Dolch sight words; however, the student was only able to read 15 of these words.

During the most recent reporting period in December 2022, the IEP Progress Report showed that Student B did not meet the benchmarks on three of her five goals. For Goal 2, she was to count, read, and write numbers to 90 with 60% accuracy; however the progress report noted that she can count but cannot write to this level. For Goal 3, the benchmark for Student B was to spell 38/52 sound correspondences but progress report showed she could only spell 35/52. For Goal 5, Student B can read 22/41 grade level sight words, while her benchmark is 28/40.

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.

Federal regulations at 34 C.F.R. 300.39(a)(1) define "special education" as specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability in a continuum of educational placements, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. Federal regulations at 34 C.F.R. 300.39(b)(3) states that "specially designed

instruction" means adapting the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum.

It is noted that the IDEA generally allows special education teachers the flexibility to determine the appropriate teaching methodology and the appropriate location to teach each individual student so long as that student is making adequate progress towards meeting their IEP goals. However, if the IEP team has determined that a specific teaching methodology or setting such as applied behavioral analysis (ABA) therapy in a 1-1 setting or Orton-Gillingham based reading instruction in a group of no more than 5 additional students is required for the student to receive a free appropriate public education (FAPE), and this is documented in the IEP, the IDEA requires this identified methodology be implemented.

Federal regulations at 34 C.F.R. § 300.156(b)(2)(iii) allows paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation or written policy, to be used to assist in the provision of special education and related services under this part to children with disabilities. Further 34 C.F.R. § 300.156(a) requires each state to establish and maintain qualifications to ensure paraprofessionals are appropriately and adequately trained.

In this case, interviews and documentation found both Student A and Student B were provided with the specialized instruction in the special education setting as required by the IEPs. USD #408 assigned appropriately credentialed paraprofessionals who were supervised by appropriately certificated teachers to assist in the provision of special education services to both Student A and Student B. Neither of the students' IEPs required a specific methodology or setting be implemented in order to provide FAPE to the student.

However, documentation showed Student A was not provided with a total of 25 minutes per day of special education staff support in the general education setting and Student B was not provided with a total of 90 minutes per day of special education staff support in the general education setting during the first semester of the 2022-23 school year.

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 special education staff support in the general education setting for both Student A and Student B during the 2021-22 school year.
In addition, 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 and 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.

In this case, Student B's amended IEP shows a material change in services and a substantial change of placement were effective as of August 15, 2022 with the first day of the 2022-23 school year being August 18, 2022. The IEP Amendment Form for Changes Not Requiring a Full IEP Team Meeting for Student B shows that USD #408 and the parent agreed to amend Student B's IEP by making these changes on August 24, 2022 and the parents were provided with a PWN requesting consent for these changes on that same date. However, the parents did not provide consent until August 30, 2022, which is after the date the proposed changes were first implemented.

Based on the foregoing, a violation of IDEA and Kansas special education regulations it is substantiated for failing to obtain parent consent prior to making a material change in services and a substantial change of placement for Student B during the 2022-23 school year.

> ISSUE THREE: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to amend the IEP goal progress report for Student A at parent request following the October 24, 2022 parent/teacher conferences.

Positions of the Parties

The complainants alleged that the special education teacher refused their request to amend the October IEP Goal Progress report to clarify the math goal and the method of data collection during the October 24, 2022 parent/teacher conference. The parents were concerned that the special education teacher reported a high level of attainment that was not seen by either the parents or the classroom teacher.

During this discussion, the parents reported that the data from the special education teacher was inconsistent and did not match the data provided from the general education math class. When questioned, the parents stated, "The special education teacher stated she did not understand the goal and she interpreted it and assessed it based on her own understanding."

The parents also reported that the special education teacher indicated that she did not understand the general education state standard addressed by the math goal. The parents stated, "We requested that she change the wording on the IEP progress report by adding the word 'rote' to [the] counting [goal on the IEP goal progress report]so that future progress monitoring on the math goal would not be contradictory as well avoid contradiction with the state standard. The special education teacher stated that could not be done."

Subsequently, the parents met with the administrators at both USD #408 and MCSEC to share their concerns and requests. To date, the parents are unaware if the IEP goal progress report has been amended.

USD #408 staff acknowledged that the parents requested that the IEP goal progress report for math be amended to clarify the goal and data collection method at the October 24, 2022 parent/teacher meeting between the parents, the general education teacher, the special education teacher, and the building principal. The district responded by clarifying that the general education teacher who teaches Student A math in the general education setting with special education staff support would be responsible for providing the IEP goal progress reporting data in the future instead of the special education teacher who does not provide any math instruction to the student. In addition, the district provided additional training and support to the special

education teacher who was new to the district and teaching special education under a waiver.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The findings of Issue Two are incorporated herein by reference.
Student A's math goal states "By the end of annual IEP year, Student A will be able to count, read, and write numerals by 1's up to 120 with 70% accuracy." The state standard associated with this IEP goal is for a student to "count to 120, starting at any number less than 120. Read and write numerals and represent a number of objects with a written numeral."

The short-term benchmark/objective for this goal was to be able to read, count, and write numbers to 60 with 70% accuracy by October 2022. The special education teacher wrote, "On average, Student A is able to read to number 44 consistently and count without a model to 27. At the beginning of the year, Student A was able to write consistently up to 20 without a model. As of 10-10-22, Student A is able to write up to 101 without a model."

The Educational Software for Guiding Instruction (ESGI) for Math Report from progress monitoring in the general education classroom dated October 24, 2022 showed the Student A scored below expectations in the areas of number recognition 0-100 and counts to 100 by 1's.

The building principal, Mr. Wasmuth reported that he attended this parent/teacher conference for Student A and he believed the parents were making a request to amend the IEP to clarify that the student would rote count, read and write number to 120. He believed the situation was resolved by his directive that future IEP goal progress on the math goal would be reported by the general education teacher who taught Student A math in the general education classroom with paraprofessional support rather than the special education teacher who did not work with the student on math.

The special education director at MCSEC, Dr. Diepenbrock reported that he met with the parents on at least two occasions following the October 24, 2022 parent/teacher meeting to discuss the parents' concerns. He indicated that MCEC provided additional support for Ms. Goodwin from the reading consultant, the behavior consultant, the IEP specialist and her special education mentor teacher.

In addition, Ms. Goodwin was formally evaluated through classroom observations and given a plan of improvement. Beginning in January 2023, Ms. Goodwin has been transferred to a different special education teaching assignment within the elementary school building and will no longer be working with Student A.

On January 5, 2023, the parents reported that the IEP goal progress report for December 2022 had not yet been updated despite their initial request back in October 2022. Again, they also shared concerns that the data collected by the general education teacher and the special education teacher did not reflect the same level of attainment in both settings.

Applicable Regulations and Conclusions

The IDEA contains two methods for amending student records. First, federal regulations, at 34 C.F.R. 300.618 allows for a process for parents to request an amendment to a student's educational records when they believe that information in the education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

Second, federal regulations at 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, it was unclear whether the parent was wanting to amend only IEP goal progress report or the IEP goal contained in the April 13, 2022 IEP or if a request for amending both was being made. The parents believed the IEP goal progress report for Student A's math goal was inaccurate and requested that it be amended at the parent/teacher conference on October 24, 2022. The special education teacher unilaterally refused this request and the parents subsequently shared their request with both administrators from USD #408 and the MCEC.

It is clear that, neither the teacher nor the administrators clarified what the parents were wanting to amend. And neither the teacher nor the administrators shared information about the amendment procedure to submit a request for a hearing when the parent's initial request was denied for a request to amend the IEP goal progress report was initially made. .

Based on the foregoing, a violation of IDEA and Kansas special education regulations is substantiated for failing to follow the appropriate procedures when the parents requested that the IEP goal progress report for math be amended during the 2022-23 school year.

> ISSUE FOUR: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to share personally identifiable information, specifically when the K-1 special education teacher discussed the Student A's behavior with another person in the hallway on September 15, 2022 without obtaining written consent.

Positions of the Parties

The complainants alleged that the special education teacher discussed Student A's behavior with a person without their permission. The mother is employed as a general education teacher at the Marion County Elementary School and she reported intervening and providing regulation techniques to her son on September 15, 2022

when he was crying in the hallway. At that time, the mother observed the special education teacher speaking to another person in the hallway about "behavior."

The mother stated, "Two hours later on the same day, another staff member in the building approached me to ask 'Why was the K-1 special education teacher talking to that other lady about your son's behavior while he was crying and upset in the hallway?' I inquired about the timing and situation. The other adult proceeded to inform me that she had witnessed the entire situation in which she heard the two ladies discussing my son's behavior in the hallway while he was crying. I asked if that adult knew who the other lady was and it was stated that they believed it was the Early Childhood SPED teacher from the Marion County Cooperative. The father met with the MCSEC interim director/administrator and MES [Marion Elementary School] building principal immediately following the event. However, no communication was received after the initial concerns were presented from the MCSEC administrator."

The district staff acknowledged the incident with Student A, the special education teacher, and the early childhood special education (ECSE) teacher on September 15, 2022 as well as the subsequent meeting with the father to discuss concerns with confidentiality and instruction. MCSEC staff reported investigating the situation and meeting with Ms. Goodwin about the parent concerns. Classroom observations, increased mentor visits, and weekly grade level meetings between the building principal, the special education teacher, and the general education teacher were provided as support for the special education teacher. The building principal reported the situation was improving slowly with these supports.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.

The findings of Issue One, Two and Three are incorporated herein by reference. Documentation was provided showing that Ms. Goodwin signed the MCSEC Confidentiality Agreement on July 1, 2022 acknowledging that students have the right to expect that information about them will be kept confidential by ALL employees, volunteers, student interns, student teachers, mentors, substitutes, and employees of

independent contractors as required by the Family Educational Rights and Privacy Act (FERPA).

Dr. Diepenbrock indicated he and Mr. Wasmuth met with Ms. Goodwin to discuss the parent concerns. Dr. Diepenbrock stated, "With the principal present, I addressed each of the issues the father brought up at his meeting with me. The teacher, Ms. Goodwin, denied calling their student any names regarding the child's behavior. To my knowledge, there were no other witnesses to that exchange.

The teacher, Ms. Goodwin, denied calling their student any names regarding the child's behavior. . . The Special Needs teacher denied inappropriate conversations about her student in violation of the FERPA instead referencing any conversations that took place were with other special education teachers and her mentor to get assistance in helping meet the needs of her special needs students."

The parents reported that Ms. May was the general education teacher who witnessed the incident. Ms. May confirmed that she saw the special education teacher and another adult talking and watching while the student was upset and crying in the hallway; however neither person attempted to intervene or provide any of the calming techniques that the parents shared at the beginning of the school year. Ms. May indicated that she thought the other adult was the ECSE teacher for the district.

Ms. Goodwin reported that Student A becomes frustrated, upset, and cries but does not exhibit any physical aggression towards persons or property. During the September 15, 2022 incident, the special education teacher reported that she gave the student "choice sticks" with a variety of calming activities from which the student chose to take a walk. The student left the classroom and was followed by Ms. Goodwin into the hallway where he continued to be upset and cry. Ms. Goodwin allowed the student space to calm, observing him from the other end of the hallway.
In her notes, entry dated September 21, 2002, Ms. Goodwin reports her discussion with Dr. Diepenbrock detailing this incident: "He went on to ask me what I talked about with the Pre-K Sped teacher and I told him the same thing I told Justin Wasmuth. I wanted to get together with her to go over the IEP's to make sure the time limits are set correctly for upcoming students. The parent of [Student A] went to Diepenbrock

and complained that I was talking to her about her student. I don't remember doing anything of the sort and stated that to the director and Justin. The director stated that he was giving me a verbal warning about confidentiality and that he would be putting it in my file."

In an email dated December 6, 2022 at 10:50 pm to Dr. Diepenbrock, Ms. Goodwin reported this description of the incident on September 15, 2022: "During this interaction, [Student A] had visibly gotten upset. I pulled out the items that his classroom teacher and mother gave me and specifically instructed me to use. They were Popsicle sticks with 4 choices on them. One of those choices was to take a walk. Since he drew that Popsicle stick, I allowed him to take a walk in the hallway. He walked ahead of me and then stopped in the hallway in front of his mom's classroom. I decided to step away and give him some space since anything I had previously said just made him visibly more agitated and upset. While I was waiting on the other end of the hallway, the Pre-K Sped teacher came out. I stopped her and proceeded to ask her to see if we could find some time to look at schedules I have of the sped students that graduate from Pre-K into Kindergarten would have the correct minutes. To my memory she did ask me about [Student A] and if he was ok. I told her that he is fine, I am just giving him some space. I didn't ever reveal any special details about his IEP or anything."

Dr. Diepenbrock stated that Kristy Butler was ECSE teacher involved in the conversation in the hallway back in September 2022. On January 6, 2022, Ms. Butler, provided a written description of what happened that day. She stated, "I only stepped into her room once toward the beginning of the year to say hi and ask her how things were going. She replied good and then said she would like to meet with me sometime about how the IEP coming from early childhood is being written. I told her that would be fine but as of now I don't have any students that will be going to kindergarten at this time. Then, I walked out of her room. I do not recall ever talking to her at any other time."

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.

It is noted that this regulation has an exception that permits disclosure of personally identifiable information to school personnel who have a legitimate educational interest in the information. That means disclosure of personally identifiable information may be made to teachers and other school personnel if that information is needed in order for those personnel to do their jobs. However, this exception does not appear to apply in this situation.

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 unclear whether the special education teacher verbally shared personally identifiable information about Student A with the ECSE teacher on September 15, 2022 based upon the conflicting reports from the parents, the special education teacher, Ms. May, and Ms. Butler.

Based on the foregoing, a violation of IDEA and Kansas special education regulations is not substantiated for failing to obtain parent consent prior to releasing personally identifiable information about a student to an unauthorized person.

ISSUE FIVE: The USD #408, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate IEP for Student A, specifically by failing to address concerns with behavior in the special education classroom setting during the 2022-23 school year.

Positions of the Parties

The complainant reports that Student A has behavioral issues related to trauma and his community psychologist provided techniques for behavioral regulation and de-escalation, which the parents have shared with the school. Beginning in September and continuing through the time of the complaint, Student A experienced behavioral escalations in the special education setting, which were resolved by the mother who teaches in the school the student attends or the general education teacher. The parents believe USD #408 has not provided Student A with a free appropriate public education because Ms. Goodwin failed to incorporate recommended tools and strategies from Student A's neuropsychologist into the special education classroom to address his behavioral needs.

The parents stated, "Prior to the school year beginning, a meeting was held between the parent(s), the general education teacher, and the special education teacher. Information was given regarding the Neuropsychologist's evaluation and recommendations, along with tools and strategies from all of the children's therapists. Materials were bought and provided by the parents with a description of how they were intended to be used. With communication, the therapists continue to provide additional tools, strategies, and materials based on the children's PTSD needs and progression of working through trauma based on early childhood years.

Daily escalations were being reported along with reports of our son's having to be removed from the resource room to a safer environment. It has been communicated to the mother from the K-1 special education teacher that the child is the most horrible child she has ever seen or dealt with. As the child has progressed from co-regulation to self-regulation in the home setting, therapy setting, and majority of other classroom settings, this environment places additional concern.

Our son has expressed that he does not like going to work with the special education teacher, and he has also expressed this multiple times with his therapist(s) who have documented this as a significant concern for his well-being and continued progress at working through early childhood traumatic experiences."

The parents report that a list of their concerns was addressed in face-to-face meetings with administrators from both USD #408 and MCSEC. The administrators have been in communication regarding the attempts that have been made to try to improve the situation to address the climate needs. However, the parents believe the district has still not adequately addressed their concerns or resolved the problems.

The district acknowledged that they have had ongoing communication during the 2022-23 school year with the parents of Student A regarding their concerns about his educational program and the special education teacher. School administrators reported seeking assistance from the Kansas Technical Assistance System Network (TASN) consultants regarding how best to address the parents' concerns. Dr. Diepenbrock stated, "They also suggested holding an IEP meeting with the parents. In my written communication with the parents, I suggested holding an IEP meeting to go over concerns and work to find solutions. They were not immediately open to having an IEP meeting believing it was too soon and felt it would replace the annual meeting." Dr. Diepenbrock reported that an IEP team meeting for Student A has not been scheduled or held during the 2022-23 school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #408.
The findings of Issues One, Two, Three, and Four are incorporated herein by reference.
The Present Level of Academic and Functional Performance (PLAAFP) in the April 13, 2022 IEP for Student A documents concerns related to his behavior.

- Under the Staff Concerns section, it states, "Student A struggles to regulate his emotions and is unable to adapt to the situation. He needs assistance from staff to help him process and communicate his emotions."
- Under the Social Emotional section it states, "Student A experienced severe trauma, abuse, and neglect prior to coming to live with the complainants. They report that Student A can become disregulated [sic] easily and become

aggressive. He can struggle staying focused during class. Student A initially struggles to build a relationship with adults he is unfamiliar with; but once a relationship is established, Student A is willing to work with that adult. Student A was given a neuropsychological examination by Kelli Nelson-Amore, Ph.D. APBB at the KU School of Medicine-Wichita and she diagnosed him with ADHD and Post-Traumatic Stress Disorder in January 2022. He was recently put on ADHD medication, which has improved his ability to focus . . . He currently has psychological therapy every other week in Newton and behavioral, occupational, and neurological therapy every other week in Wichita that is provided by his family. He experiences emotional and behavioral dysregulation."

- The PLAAFP states that the student's area of exceptionality (OHI) does impact his ability to make progress in the general education curriculum by "negatively impacting his ability to fully regulate his emotions and stay focused".
- The PLAAFP states that these concerns will be addressed through accommodations, modifications, assistive technology, supplementary aids and supports, and positive behavioral supports/other.

The Accommodations section of the IEP states that "regulation tools" are to be used after emotional dysregulation in all settings, both general education and special education until he becomes emotionally regulated again. No modifications related to behavior were listed in the Modifications section of the IEP and the IEP states that Student A does not require the use of assistive technology.
The IEP requires Supplementary Aids and Services in the amount of 120 minutes per day of para support in the general education classroom during math (60 minutes) and social sciences (Discovery Time)(60 minutes).
The IEP does not include a Behavior Intervention Plan.

Applicable Regulations and Conclusions

Federal regulations, at 300.324(a)(2)(i), require IEP teams to consider the use of positive behavioral intervention and supports, and other strategies to address the behavior of a student whose behavior impedes the child's learning or the learning of others. The Kansas Special Education Process Handbook in Chapter 4, Section E.1.e., states that the focus of behavioral interventions and supports in the IEP is prevention of the behavior, not just provision for consequences subsequent to the behavior. The

positive behavioral interventions and supports could be implemented through the IEP annual goals, program modifications, or a behavioral intervention plan (BIP). If a BIP is developed by the IEP team, it becomes part of the IEP.

Federal regulations, at 34 C.F.R. 300.324(b) requires that an IEP team meeting must be held at least annually to review and revise the IEP, if appropriate, to determine whether annual goals are being met, to address any lack of expected progress towards IEP goals, to consider the results of any reevaluation and/or information provided by the parent, or to discuss the child's anticipated needs, or other matters.

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, interviews and documentation support a finding that USD #408 found the student's behavior impeded his learning and his access to the general education curriculum at the April 13, 2022 IEP team meeting with the parents in attendance. Student A's IEP team determined the behavioral concerns would be addressed through an accommodation for the use of regulation tools and techniques when the student became dysregulated and the provision of paraprofessional support services in the general education setting for 120 minutes per day. The IEP team did not choose to include a behavior goal, conduct a functional behavioral analysis, or develop a behavior intervention plan (BIP) for the student at that time.
During the 2022-23 school year, the parents shared ongoing concerns about the special education teacher's implementation of the student's IEP on multiple occasions with school staff and administrators in both USD #408 and MCSEC. The LEA responded to these parent concerns by consulting with TASN and providing additional support and training for the special education teacher. IEP goal progress reports show the student was not making progress towards all of his IEP goals in both October and

again in December 2022. The LEA suggested reconvening the IEP team to discuss and develop a plan to address the parents' concerns; however, the parents were "not open" to this action.
It is noted that the federal regulations, at 34 C.F.R. 300.322, requires parents to be provided with the opportunity to participate in IEP team meetings but also includes a procedure to follow when parents are unavailable or choose not to participate.

In this case, there was ample reason for USD #408 to reconvene the IEP team to discuss the parents' concerns, the student's behavior, and the lack of progress towards the IEP goals. The fact that parents are "not open" to reviewing the IEP does not excuse the district from its duty to at least offer a FAPE through the IEP process. When an IEP team meets and proposes changes to an IEP that requires parent consent, and that request is not granted, the district is precluded from making those proposed changes. In such cases, it is important that the district is able to document the services it offered.

Based on the foregoing, a violation of IDEA and Kansas special education regulations is substantiated for failing to reconvene the IEP team to review and revise the IEP, if appropriate, to address whether annual goals are being met, to address any lack of expected progress towards IEP goals, to consider the results of any reevaluation and/or information provided by the parent, or to discuss the child's anticipated needs, or other matters.

In addition, 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.

Previous investigation findings documented that the student's IEP was not being implemented as written, specifically the provision of paraprofessional support in the general education setting for 120 minutes per week. The investigation of Issue Five

also found that while the accommodations for the use of regulation tools and strategies was initially implemented on September 15, 2022 during the incident in the hallway, the special education teacher failed to continue the use of other dysregulation strategies until the student became emotionally regulated again.

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 Student A's accommodation to use regulation tools until the student becomes emotionally regulated again 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 implementing the IDEA 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, interviews and documentation found the USD #408 failed to provide the special education staff support in the general education setting for Student A for 25 minutes per day for 84 days during the first semester of the 2022-23 school year resulting in Student A not receiving a total of 35 hours of specialized instruction required by the April 13, 2022 IEP. In addition, Student B was not provided with 90 minutes per day for 84 days during the first semester of the 2022-23 school year resulting in Student B not receiving a total of 126 hours of specialized instruction required by the August 24, 2022 IEP amendment. In addition, Student A's IEP accommodation for using regulation

tools and strategies until the student has regained emotional control was not implemented during the incident that occurred on September 15, 2022.

> B. 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 and state regulations at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services or a substantial change in placement.

In this case, USD #408 and the parent agreed to amend Student B's IEP on August 24, 2022 by making a material change in services and a substantial change of placement. The parents were provided with a PWN and request for consent for these changes on that same date. However, the amended IEP shows the changes effective as of August 15, 2022, which is prior to the date the parents agreed to the proposed changes. In addition, the parents did not provide consent for these changes until August 30, 2022 which is after the changes were implemented on August 18, 2022, the first day of school.

> C. Federal regulations, at 34 C.F.R. 300.618 allows for a process for parents to request an amendment to a student's educational records. A parent who believes that information in the education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

In this case, the parents believed the IEP goal progress report for Student A's math goal was inaccurate and requested that it be amended at the parent/teacher

conference on October 24, 2022. The special education teacher unilaterally refused this request and the parents subsequently shared this request with both administrators from USD #408 and the MCEC. However, neither the teacher nor the administrators shared the procedure to submit a request for a hearing when the parent's initial request was denied.

D. Federal regulations, at 34 C.F.R. 300.324(b) which require that an IEP team meeting must be held at least annually to review and revise the IEP, if appropriate, to determine whether annual goals are being met, to address any lack of expected progress towards IEP goals, to consider the results of any reevaluation and/or information provided by the parent, or to discuss the child's anticipated needs, or other matters.

In this case, interviews and documentation found there were ample reasons for USD #408 to reconvene the IEP team to discuss the parents' concerns, the student's behavior, the lack of progress towards the IEP goals as well as clarify Student A's math goal.

Based on the foregoing, USD #408 is directed to take the following actions:

1) Within 30 calendar days of the date of this report, USD #408 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 IDEA 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.

   b) Comply with state regulations implementing the IDEA 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.

   c) Comply with 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.

d) Comply with state regulations implementing the IDEA at K.A.R. 91-40-27(a)(3) which require school districts to obtain parent consent before making a material change in services or a substantial change in placement.

e) Comply with federal regulations, at 34 C.F.R. 300.618 allows for a process for parents to request an amendment to a student's educational records. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

2. USD #408 shall reconvene Student A's IEP team no later than February 10, 2023 to discuss the parents' concerns as well as the lack of progress towards the student's IEP goals and to review and revise the IEP, if appropriate. In addition, USD #408 will offer a minimum of 35 hours of compensatory special education staff services in the general education setting as described in the April 13, 2022 IEP to the parents in order to provide a free appropriate public education (FAPE) to the student. USD #408 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' 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.

3. USD #408 shall reconvene Student B's IEP team no later than February 10, 2023 to discuss the parents' concerns as well as the lack of progress towards the student's IEP goals and to review and revise the IEP, if appropriate. In addition, USD #408 will offer a minimum of 126 hours of compensatory special education staff services in the general education setting as described in the August 24, 2022 IEP amendment to the parents in order to provide a free

appropriate public education (FAPE) to the student. USD #408 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' 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. No later than February 10, 2023, USD #408 shall will contact TASN to request that TASN conduct a training for all licensed and certificated special education staff, including IEP managers, school psychologists, and building administrators working at Marion Elementary School in USD #408 regarding the IDEA requirements related to the procedures for providing parents with appropriate prior written notice and obtaining consent prior to making a material change in services and/or a substantial change of placement; the policy and procedures for reconvening a student's IEP team: as well as the procedures for responding appropriately to a parent request for an amendment to a child's educational record. No later than five days after completion of the TASN training, USD #408 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 #408 will provide SETS with any handouts and/or a copy of the presentation.

4. No individual corrective action is ordered regarding the failure to obtain parent consent prior to making the material change in services and the substantial change of placement for Student B because the parents agreed with these proposed changes on August 24, 2022 and would have certainly provided the written consent if the PWN document had been offered at that time instead of following the discussion between the parties. The changes were made beginning on August 18, 2022 which is only five days prior to the date of the IEP amendment agreement and therefore does not rise to the level of a failure to provide a free appropriate public education (FAPE) to the student.

5. No later than February 15, 2023, USD #408 will respond appropriately to the parents' request for an amendment to the student's IEP goal progress report for math by either granting the request or by denying the request and providing the parent with information about their right to request a hearing. A copy of the written response will be provided to SETS no later than February 17, 2023.

6. 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) as described below.

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, M.Ed., 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 #233
ON AUGUST 10, 2022

DATE OF REPORT SEPTEMBER 9, 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." _____'s parents are _____ and in the remainder of this report they will be referred to as "the mother," "the father," "the parents," or "the complainants".

The complaint is against USD #233 (Olathe Public Schools). In the remainder of the report, the "school," the "district," the "local education agency (LEA)" shall refer to USD #233.

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 August 10, 2022 and the 30-day timeline ends on September 9, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on August 13 and August 29, 2022. Emails were exchanged between August 10 and August 29, 2022.

Staff of USD #233, Olathe Public Schools interviewed on August 24, 2022 included Deb Chappell, Assistant Director of Special Services, Ashley Enz, Special Services Coordinator, Dr. Sarah Gilliland, Director of Health Services, and Anjanette Tolman, Executive Director of Special Services.

The Complaint Investigator also exchanged emails with the #USD 233 staff between August 15, 2022 and August 25, 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:

- Kansas Special Education Reimbursement Guide for Nurse/School Nurse, revised May 16, 2022
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent (PWN), dated June 8, 2022
- Individualized Education Program (IEP), dated June 14, 2022
- Email from Laura Warren, Center-Based Resource Consultative Teacher to Matt Kunstman, Special Services Coordinator, Ms. Enz, Heidi Schneider, Special Services Coordinator and Ms. Tolman, dated August 6, 2022 at 11:07 p.m.
- Email from Ms. Toman to Ms. Warren, Mr. Kunstman, Ms. Enz, and Ms. Schneider, dated August 6, 2022 at 11:10 p.m.
- Email from Ms. Warren to Ms. Tolman, Mr. Kunstman, Ms. Enz, and Ms. Schneider, dated August 6, 2022 at 11:13 p.m.
- Email from Sherry Evilsizor, Teacher, Madison Place Elementary, to classroom parents, dated August 8, 2022, forwarded by Dr. Gary Stevenson, Principal, Madison Place Elementary on August 15, 2022 at 8:39 a.m.
- Email from Gwen Beebe, Vice President of Operations & Business Development, Phoenix Home Care & Hospice to Sally Boyd, Special Services Specialist, Olathe Public Schools, dated August 11, 2022 at 10:28, a.m.
- Written notes of a telephone conversation between mother and Ms. Enz, written by Ms. Enz, dated August 11, 2022
- Email from Ms. Boyd to Ms. Beebe, dated August 12, 2022 at 10:05 a.m.
- Phoenix Home Care and Hospice Services Agreement for contract dates of August 2022 - June 2023 between Olathe Public Schools Unified School District No. 233 and Phoenix Home Care and Hospice with Contractual Provisions Attachments signed by Phoenix Home Care & Hospice on August 11, 2022 and Olathe Public Schools Unified School District No. 233 on August 12, 2022
- Correspondence, dated August 15, 2022 to document collaboration time between Tammy Shull, LPN, Phoenix Home Care & Hospice and Jennifer Casson, BSN, RN, School Nurse, Madison Place Elementary
- Participant sign in sheet for Inservice on student's Deaf or Hard of Hearing services and equipment, dated August 18, 2022 conducted by Dawnetta Leigh Unkel, Audiologist, Olathe Public Schools
- Agenda and Participant sign in sheet for feeding and swallowing services for the student, dated August 18, 2022, conducted by Chelsie Green, Speech-Language Pathologist, Olathe Public Schools
- Eating At A Glance handout with list of recipients for the student, dated August 18, 2022

- Participant sign in sheet for Heartsaver CPR and First Aid, dated August 18, 2022, conducted by Dr. Gilliland
- Email from Ms. Chappell to parent, dated August 18, 2022 at 3:26 p.m.
- Email from Ms. Gilliland to parent dated August 19, 2022 at 9:08 a.m.
- Olathe USD 233 Response to Formal Complaint 23FC233-001, dated August 21, 2022

Background Information

This investigation involves a six-year-old female student who is currently enrolled at Madison Place Elementary School in USD #233 as a kindergartner. She is eligible for special education and related services under the category of Multiple Disabilities. She lives with her mother and father.

The student received home-bound special education services and related services from her neighborhood school in USD #233, Forest View Elementary. Her last annual IEP was developed May, 23, 2022 and revised on June 14, 2022 to record the IEP team decision to move to in-school services for the 2022-2023 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)).

Issue One

> The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP by failing to properly train staff for the needs of the student for the 2022-2023 school year.

Positions of the Parties

The complainant alleged that the district was not following the student's current IEP. The IEP was revised this summer so the child can receive in-school services. The IEP stated a specially trained nurse, and the IEP team were to communicate with the home health nurse about ongoing safety and services for the student to ensure the staff were well-prepared. During the June 8, meeting the IEP team discussed using the family's home health provider and contingency plans for nursing absences and training. They stated they did not hear of any plans or updates as the start of the school year neared and not until August, did they learn that the school district had not hired a nurse, nor reached out to coordinate with the home

health nurse. The parent stated her child could not safely receive services in-school until the nursing services were in place and that the nurse and staff were trained as outlined in the IEP.

The district responded that the student attends a Center Based Resource Level II program for medically fragile students that addresses the needs of students who have intellectual disabilities and other specialized education and health services due to physical or medical needs.

The student's IEP describes specific staff training to allow the student to receive FAPE. Although the IEP contains no specific timeline for completion of this training, it was completed within four days of the student's attendance. The district acknowledged that it had not been able to hire a new nurse in spite of advertising for the position. In communicating this with the parents, the parents asked if the district could contract with the agency the family used for home health services to ensure the nurse was familiar with the student's health needs. While this home health agency had not previously been contracted in the district, USD #233 developed a contract for the student's attendant care services and signed a contract for the school year to provide services to start the school year. Unfortunately, the parent's preferred provider was not scheduled to work the first two days of the school year so training could not occur prior to the start of the school year. They stated the parents agreed to the timing of the training.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the complainant and staff in USD #233.

The June 14, 2022 IEP Least Restrictive Environment School Setting statement references "full day nursing care at school". Further, it is noted that in kindergarten, the student will need access to specialized instruction in all areas, as well as continuous health/medical care.

The June 14, 2022 IEP lists 415 minutes of Attendant Care provided by a Nurse be provided five days every week.

The June 14, 2022 IEP specifies in the Other Considerations section that staff training (listed below) be provided, however a timeline for completion of the staff training is not specified:·

- Needs of a student with a hearing loss, (ex. Remote microphone technology, cochlear implants)
- Feeding and swallowing, aspiration
- CPR and First Aide

The June 8, 2022 PWN states "the regular building nurse will be trained how to provide for student's needs and the personal LPN from home will be allowed to collaborate and provide training for school nursing staff."

Staff notes of a telephone conversation between Ms. Enz and the mother on 8/11/22 at 4:09 p.m. state the IEP training for staff should occur and be documented, but it would be hard to schedule now that school has started. According to the staff note, the parent told Ms. Enz that it was "no big deal" to do training when student is at school.

Interview with both staff and parent show that the student's personal LPN from home provided training to the building RN and other staff the first day Kaylee attended school, Monday, 8/15/22, and consulted with classroom staff throughout the first week of school. Additionally, the parent provided a safety procedure guide for anyone on the team to reference or in the case of a staff absence.

Agendas and participant sign in sheets show the training topics specified in the June 14, 2022 IEP were completed on August 15, 2022. Specifically,

- Inservice for eleven staff regarding the needs of a student with a hearing loss (ex. Remote microphone technology, cochlear implants) was completed by Dawnetta Unkel, Audiologist, on 8/18/22.
- CPR and First Aid training was provided to nine staff in CBR II classrooms by Dr. Sarah Gilliland, Director of Health Services, on 8/18/22.
- Feeding, swallowing, and aspiration training was completed with fourteen participants by Chelsie Green, Speech Language Pathologist, on 8/18/22.

The parents and district report that the student will not attend school on Fridays because the student's preferred LPN from Phoenix Home Health & Hospice is not able to work those days. The district stated that this is the district's offer of a Free Appropriate Public Education (FAPE) and it should remain in the student's IEP even if the parent elects to keep the student home on particular dates.

The Kansas Special Education Reimbursement Guide (rev 5/16/2022) dictates that a registered nurse licensed in Kansas with a multistate or single license (Kansas Board of Nursing) …can be claimed for the provision of special education services as identified in the anticipated services section in individual student's IEPs which must contain anticipated frequency, duration, and location of specific special education nursing services.

Ms. Chappell reports that the district has advertised for a registered nurse (as required The Kansas Special Education Reimbursement Guide (rev 5/16/2022) but no one has applied to date.

Ms. Chappell reports that the district retains two health and nursing agencies to provide nursing and health services for the district and was prepared to contract with one of the agencies to provide the IEP services, however the parents asked if the agency that provides home health services for the student could be retained since they are familiar with the student.

Emails show that the district began correspondence with Phoenix Home Health & Hospice services (the parent's Home Health Agency) beginning August 6, 2022 to secure a contract between the agency and the district.

The Contract between the district and Phoenix Home Care & Hospice was executed August 12, 2022 and shows that the district will obtain the services of a Licensed Practical Nurse (LPN) for Private Duty Nursing beginning August 2022 - June 2023 for the hours the student is attending school and in need of Private Duty Nursing Services. By report this nurse is currently providing nursing services to the student in the home.

The district stated the itinerant RN was available to support the student, in addition to the regular building RN.

The parents and district report that the student's first day attending school was Monday, August 15, 2022, by Parent decision. The parent elected not to send the student to the first half-day of school on Thursday, 8/11/22 or Friday, 8/12/22 because the preferred nurse from Phoenix Home Health & Hospice was not able to work those days.

Applicable Regulations and Conclusions

34 C.F.R. 300.320(a)(4)(i)), 34 C.F.R.300.320(a)(7) and K.S.A. 72-3429(c)(4) state that each IEP for a child with an exceptionality must include a statement of the supports for school personnel that need to be provided for each child to enable him/her to advance appropriately toward attaining their measurable annual goals and to be involved and progress in the general education curriculum. These supports may include specialized staff development. The program modification and/or support for school personnel in the IEP must state not only the anticipated frequency, location, and duration of those services and modifications but also, "the projected date for the beginning of the services…" (34 C.F.R.300.320(a)(7)).

In this case it is found that while the IEP listed a statement of supports for school personnel for the child to receive FAPE. The specific training topics were listed in the Other Considerations section of the June 14, 2022 IEP. It is further found that the district provided the specified training to the appropriate staff.

However, a procedural error occurred when the training date was not specified in the IEP.

It is noted that the district completed the specified training the first week the student was in attendance and the nurse familiar with the student provided the attendant care. The student's IEP does not require any additional training.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with a special education statute and regulation. A procedural violation occurred in the following area:

A. Federal regulations at 34 C.F.R. 300.320(a)(4)(i)), 34 C.F.R.300.320(a)(7) and K.S.A. 72-3429(c)(4) require school districts to specify the projected date to conduct the support services to enable the student to advance appropriately toward attaining their measurable annual goals and to be involved and progress in the general education curriculum.

In this case, USD #233 committed a procedural error when it did not specify a projected date to conduct the training listed in the Other Considerations section of the June 14, 2022 IEP for the student.

Based on the foregoing, USD #233 is directed to take the following actions:

1. By October 1, 2022 USD #233 shall submit evidence that special education staff have been notified to write all IEPs to include anticipated frequency, location, and duration of services and modifications, and the projected date for the beginning of those services and modifications.
2. Further, USD # 233 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.

Complaint Investigator

Donna Wickham

Donna Wickham, Complaint Investigator

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.

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 JANUARY 10, 2023

DATE OF REPORT FEBRUARY 9, 2023

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on January 11, 2023. On January 11, 2023, the investigator also spoke via telephone with Dr. Kevin Raley, Director of Special Services for USD #437.

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

- IEP for the student dated February 3, 2022
- Email dated August 25, 2022 from the parent to the special education teacher
- Email dated September 15, 2022 from the parent to the director of special services and the building principal
- Online calendar for the district for the 2022-23 school year
- IEP Progress Reports for the students annual goals covering the period of March through December 2022
- Service Log for physical therapy for the student for the 2022-23 school year
- Service log for occupational therapy for the student for the 2022-23 school year
- Service log for speech/language services for the student for the 2022-23 school year
- Service notes for the special education teacher for the student for the 2022-23 school year
- Service log for visually impaired services for the student for the 2022-23 school year

Background Information

This investigation involves a seven-year-old girl who is enrolled as a first grader in her neighborhood school, but she has never attended a class at the school. According to the parent, the student began receiving support through the Tiny-k program, a program for children with disabilities in Kansas who are younger than 3. Services were delivered in the home. That same model was followed when, at age 3, the student entered district preschool services. When the student turned five, she was enrolled in the district's program for students with multiple disabilities which is housed in an elementary school a few miles away from the student's home. Services continued to be provided under a homebound delivery model.

The student is adopted. According to the parent, the student is a "shaken" child who was injured at age 7 weeks. The parent reports that as a result of being shaken, the student had a traumatic brain injury and developed dysautonomia, a disorder of autonomic nervous system function which controls heart rate, blood pressure, digestion, and other automatic processes in the body.

The student is non-ambulatory and depends on her wheelchair and caregiver for mobility. Because she has a trach, she is non-verbal and uses assistive technology, eye gaze, vocalizations, and facial expressions to communicate. She has been diagnosed with Cortical Visual Impairments.

Issue

In her complaint, the parent identified the following issue:

The student is not receiving the special education services required by 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 district is 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); K.A.R. 91-40-8(h), (i); K.A.R. 91-40-16(b)(1) – (3); K.A.R. 91-40-16(c); 34 C.F.R. 300.323(a), (c)). The IEP for a student with an exceptionality must include, among other elements, a statement of the special education and related services to be provided to the student and must indicate the projected date for the beginning of these services as well as their anticipated frequency, location, and duration (K.S.A. 72-3429(c)(7)). The amount of services to be provided must be stated in the IEP so that the level of the district's commitment to each is communicated in a manner that is clear to all who are involved in both the development and implementation of the IEP (Federal Register, August 14, 2006, p. 46667).

The Office of Special Education Programs (OSEP) is a division within the U.S. Department of Education. OSEP provides leadership and support for professionals working with children with disabilities. OSEP administers the Individuals with Disabilities Education Act (IDEA) and frequently provides guidance in the form of an "OSEP Letter" in response to specific questions raised by parents, educators, advocacy organizations, state educational agencies, and other interested parties.

In a March 8, 2007 "Letter to Clarke," the director of OSEP opined on what to do when a related service was missed due to the absence of the service provider. As stated in the letter,

> *"IDEA and the regulations do not address these issues. States and local education agencies (LEAs) are required to ensure that all children with disabilities have available to them FAPE [a free appropriate public education} consistent with the child's individualized education program (IEP) (see CFR 300.101). We encourage public agencies to consider the impact of a provider's absence…on the child's progress and performance and determine how to ensure the continued provision of a FAPE in order for the child to continue to progress and meet the annual goals in her or her IEP. Whether the interruption of services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis."*

Parent's Position

The parent asserts that while physical and occupational therapy as well as speech/language and visually impaired services have generally been provided on a consistent basis, the district has – because of illness or staffing shortages – failed to provide several one-hour sessions with a special education homebound teacher. According to the parent, in September 2022 she contacted the Director of Special

Education as well as the building principal and the teacher to let them know of her concerns regarding the missed services, but the issue remained unresolved at the time she filed this complaint.

District's Position

The district acknowledges that staff illness and the student's physical condition have impacted the delivery of special education services to the student. However, it is the position of the district that staff illness falls outside of its locus of control, and a concerted effort has been made to avoid any risk of unnecessarily exposing the student to germs.

According to the district, missed services will be addressed through the ongoing provision of "compensatory services/makeup sessions."

Investigative Findings

The student's February 3, 2022 IEP requires that the she receive the following services:

- 60 minutes of support every four weeks in a homebound setting from a teacher of the visually impaired and an orientation and mobility specialist;
- 45 minutes of speech and language services every two weeks in a homebound setting;
- 40 minutes a week of physical therapy in a homebound setting;
- 30 minutes of occupational therapy every two weeks in a homebound setting; and
- 60 minutes of special education services twice a week in a homebound setting.

The 2022-23 school year for the district began on August 11, 2022 for students in grades one through nine. Nothing is contained in the student's February 3, 2022 IEP to indicate that the school year for the student started any later than for other students in the district or that the delivery of special education or related services would be delayed.

Visually Impaired Services:

Services related to the student's visual impairment were initiated within 4 weeks of the start of the 2022-23 school year and were thereafter provided as required by the student's February 3, 2022 IEP.

A service log for the provider of the student's Visually Impaired (VI) services shows that these services for the 2022-23 school year were initiated on September 8, 2022 – just short of four weeks from the start of the school year. The VI specialist had been ill at the

time of a previously scheduled visit for August 25, 2022. After the September visit, the VI specialist provided direct service to the student on the following dates:

- October 6, 2022;
- November 3, 2022;
- December 1, 2022; and
- January 12, 2023 (19 school days since the previous visit).

Speech/language services:

Service logs provided by the district show that Speech/Language services for the student were initiated on September 9, 2022 – approximately 4 weeks after the start of the 2022-23 school year. The student consistently received at least 45 minutes of service every two weeks thereafter except for December 2, 2022 when the parent cancelled the session when the speech/language therapist arrived at the home with what was described in the service log as a "post nasal drip."

Physical Therapy:

The student was consistently provided with weekly 40-minute sessions of physical therapy once those services were initiated on August 26, 2022 – approximately two weeks into the 2022-23 school year.

Occupational Therapy:

No Occupational Therapy sessions were provided during the first two weeks of the 2022-23 school year. Services were delivered twice during the month of September, but not on an "every two weeks" schedule. Sessions were held two weeks in a row on September 29 and October 6, 2022, but not again until October 26, 2022. Only one session was conducted during each of the months of November and December 2022.

During the period of August 11 through October 6, 2022, OT sessions were conducted on Thursdays. If the established scheduled had continued, the student would have received services on October 20, 2022, but parent/teacher conferences were held that week, and the student was next served on Wednesday, October 25, 2022. The next session was two weeks later on November 9, 2022, but Thanksgiving break began two weeks later – on November 23, 2022, so no service was provided. December 7, 2022 was an early release day for the district, so the student was not seen until December 14, 2022 - 5 weeks after the last scheduled OT session.

Had OT services started as they should have on August 25, 2022, and been delivered on the "every two weeks schedule" called for in her February 3, 2022 IEP, the student would have received ten OT sessions from the time school started until this complaint was filed. While, all "missed" sessions were scheduled for days when school was not in session, the service schedule contributed to the student having missed 30% of her sessions. (The provision of services twice in two weeks reduced the total loss to 20% of required services.)

Special Education Services:

For the 2022-23 school year, these services were to be provided by a special education teacher from a nearby elementary school. On August 25, 2022, the parent sent an email to the special education teacher asking, "Do you know when you'll be coming to see [the student]?"

The student received her first hour of homebound instruction from the special education teacher on August 29, 2022.

On September 15, 2022, the parent sent an email to the director of special services and the building principal (at that time). The parent wrote

> *"I am concerned that [the student] has only been able to receive special ed services three times since the beginning of school. The IEP indicates that she would have special education services two times per week. We have been more than patient trying to allow time for the district to get the staffing issues worked out and believe it is unacceptable that [the student's] IEP is not being met. Can you please let me know steps being taken to resolve this?"*

By January 10, 2023, the date this complaint was filed, school had been in session for all or part of 21 weeks (excluding two weeks for Winter Break). For two weeks during that period, school was in session for only three days. The first week of the school year began on a Thursday, and students were released after school on Wednesday, October 19, 2022 to allow for parent/teacher conferences. School was in session for only two days during the week of November 21, 2022 because of Thanksgiving break. This complaint was filed on Tuesday, January 10, 2023.

Allowing for a one hour reduction in services for the three shortened weeks described above, the student should have received a minimum of 39 hours of service from a special education teacher between the start of the 2022-23 school year and January 10,

2023, the date this complaint was filed (twice a week for 18 weeks and once a week for three weeks).

On several occasions, the special education teacher was unable to provide services to the student. Records provided by the district show that lapses in service were due to a number of factors including

- inadequate staffing to provide coverage for the assigned special education teacher at the neighborhood school;
- unavailability of the assigned special education teacher;
- unavailability of substitute coverage; and
- illness of the assigned teacher.

The special education teacher provided extra services during some weeks in an effort to make up for services that were not provided. On some occasions, the special education teacher was working but symptomatic, and the parent declined services in order to avoid possible exposure for the student.

According to the parent, the student received a combined total of 24 hours of special education services during this 21 week period (including both scheduled and "make up" sessions). According to information provided by the parent, the student received services from the special education teacher

- once during the month of August (August 29, 2022);
- four times during the month of September (September 8, 20, 28, and 29, 2022);
- nine times in October (October 4, 5, 6, 11, 14, 18, 19, 25, and 26, 2022);
- five times in November (November 1, 3, 8, 9, and 10, 2022);
- three times in December (December 6, 7, and 8, 2022); and
- twice in January (January 3 and 5, 2023).

The district provided evidence of three additional days of service during this same period (September 27, October 13, and November 15, 2022) for a total of 27 of the 38 hours of special education services in the homebound setting required by the student's IEP. As of January 10, 2023 – the date this complaint was filed – the student had still not been provided with a total of 11 hours of special education services.

Provision of FAPE:

There is no indication that the district's failure to consistently provide some special education and related services in the manner specified in the student's February 2, 2022 IEP has resulted in a denial of a FAPE. IEP Progress Reports for the student completed during the first semester of the 2022-23 school year show that she has continued to make adequate progress on each of her IEP goals to be able to attain those goals on schedule.

Summary and Conclusions

The 2022-23 school year for the district started on August 11, 2022. The parent had no reason to anticipate that the the school year for the student would start later for the student or that the initiation of special education and related services would be delayed.

VI services have been delivered once every four weeks as required by the student's February 3, 2022 IEP.

The start of speech/language services to the student was delayed until the fourth week of the school year, resulting in the loss of 45 minutes of direct services to the student in the homebound setting. Thereafter, 45 minutes of services were delivered every two weeks as required. One session was cancelled by the parent; no compensatory services will be required for this session since the therapist was available at the home for the session, but the parent declined services.

Physical therapy services were initiated on August 26, 2022, 12 days after the start of the school year, resulting in a 40-minute loss of services to the student. Forty minutes of PT services were then consistently provided each week from that point forward with the exception of the week of August 29, 2022. The student had undergone a medical procedure, and the parent declined physical therapy services for that week.

Occupational therapy services have not been consistently delivered on the "every two weeks" schedule specified in the student's February 3, 2022 IEP. On three occasions, sessions were scheduled in a rotation that fell on days when students were not in school because of parent/teacher conferences or vacation days. The district is strongly encouraged to consider the school calendar when establishing service schedules so that the provision of services to students is not unduly impacted.

Homebound special education support was not initiated until August 29, 2022. Staffing issues, illness, and scheduling conflicts subsequently contributed to additional missed services. While the district attempted to make up some of the missed time, 11 hours of service from the special education teacher had not been provided by the time this complaint was filed on January 10, 2023.

Because – as detailed above – the district failed to provide the student with some of the special education and related services specified in her February 3, 2022 IEP, a violation of special education statutes and regulations is substantiated.

Additional Comments

Between January 10 and February 2, 2023, two more sessions with the special education teacher (January 10 and 12, 2023) were missed because of staffing issues. One of these sessions was made up on January 13, 2023. One other additional session was provided on January 20, 2023.

The district has begun employing a substitute to cover for the special education teacher, thus allowing the special education teacher to deliver make-up (compensatory) services.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes 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 #437 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) Within 10 calendar days of the date of this report, submit to SETS for approval a plan to ensure that special education services from the special education teacher are provided as required by the student's IEP (i.e. 60 minutes twice a week – unless or until the parent consents to a change in these services.)

3) Within 10 calendar days of the date of this report, submit to SETS for approval a plan for the provision of the following compensatory services:
   - 11 hours (660 minutes) of compensatory special education services in the homebound setting;
   - 45 minutes of compensatory speech/language services in the homebound setting;
   - 40 minutes of compensatory physical therapy services in the homebound setting;
   - 30 minutes of compensatory occupational therapy services in the homebound setting; and
     a) Because the student appears to struggle to tolerate more than one session per day of special education services (including related services), the district's plan should not include the provision of multiple services in any given day.

4) Within 5 days of receipt of approval for the plan described under Corrective Action 3, the district shall schedule a meeting with the parents to present the plan.
   a) The parents shall have the option of accepting all or part of the proposed plan and shall notify the district in writing of their decision within 5 calendar days of the meeting described above.
   b) The district shall notify SETS of the parents' decision no later than 5 calendar days after receipt of the parents' written response.

5) By no later than the 5th of each remaining month in the 2022-23 school year, beginning March 5, 2023 and ending no later than June 5, 2023, USD #437 shall submit to SETS a summative report regarding the provision of special education services to this student during the previous month. That report shall reflect the provision of all services called for in the student's IEP as well as any compensatory services provided during the previous month. If the student's February 3, 2022 IEP is revised or amended at any point prior to June 5, 2023, the district shall notify SETS of any changes related to the provision of special education and related services.
   a) The report should also indicate whether any additional required services (beyond those specified in this report) were missed during the preceding month, as well as whether or not those services were made up during that same period. If services missed during the preceding month were not already made up, the report should specify how and when any additional compensatory services will be provided.
   b) The district will not be required to provide compensatory services for sessions missed because the parent declined services. If the parent declines to allow

service on a scheduled day, that choice should be documented in the monthly report.

6) By no later than September 5, 2023, USD #437 shall submit to SETS a report summarizing the provision of special education and related services to this student during the month of August 2023.

7) By no later than June 1, 2023, USD #437 shall submit to SETS for approval, written guidelines addressing
   a) the initiation of special education and related services at the start of each school year; and
   b) when and how to address any failure to provide services because of the illness/unavailability of the service provider.

8) Further, USD #437 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



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 JANUARY 3, 2023
DATE OF REPORT FEBRUARY 9, 2023

This report is in response to a complaint filed with our office on behalf of Student by his parents, Mother and Father. In the remainder of the report, Student will be referred to as "the student". Mother will be referred to as "the mother" and Father will be referred to as "the father". Together, Mother and Father will be referred to as "the parents" or "the complainants".

The complaint is against USD #437, Auburn / Washburn Public Schools. In the remainder of the report, "USD #437," "the "school," the "district", and 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 initially received the complaint on January 3, 2023; however, the timeline to investigate the complaint was extended until February 9, 2023 due to the parents' technical difficulties in providing supporting documentation.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the parents by telephone on January 5, 2023 to clarify the issues of the complaint. The Complaint Investigator interviewed the parents by telephone on January 21, 2023.

The parents requested and provided written consent for several other persons to be interviewed during the investigation. These persons were contacted and offered the opportunity to provide information relevant to the allegations.

Florence Cornish and Michelle Holmer from the Disability Rights Center of Kansas indicated that they had no direct knowledge in regards to the allegations made by the parents and could only confirm what the parents had shared with them. Amanda Nestler, Licensed Master Social

Worker, declined to be interviewed because she serves as the student's individual mental health therapist and is bound by confidentiality under HIPAA

USD #437 made the following administrative staff available for telephone interviews on January 18, 2023:

- Kevin Raley, Director of Special Services
- Jamie Callaghan, Executive Director of Learning Services
- Erin Bennett, Dean of Behavioral Services
- Katie Sonderegger, Principal of Farley Elementary School
- Lori Kopp, School District Attorney

In completing this investigation, the Complaint Investigator reviewed the following resources and documentation provided by the complainants and the district:

- Multidisciplinary Evaluation and Eligibility Report dated May 20, 2019
- Evaluation Team Report dated January 11, 2021
- Discipline records dated between October 18, 2021 and October 25, 2022
- Emergency Safety Intervention (ESI) Reports for the 2021-22 school year
- Individualized Education Program (IEP) dated May 16, 2022
- Accommodation Documentation Chart for IEP dated May 16, 2022
- Responses to Therapist Concerns/Questions Regarding FBA and IEP dated May 18, 2022
- Infinite Campus Records for the student including grade cards, attendance record, discipline record, health records, etc.
- Emails between Erin Bennett, Dean of Behavioral Services, and the parents dated between August 3, 2022 and August 8, 2022
- Professional Development and Training for Farley Elementary School dated between August 5, 2022 through October 20, 2022
- Professional Development Itinerary for Farley Elementary School dated August 8, 2022
- Slides from Zones of Regulation Training presented at Farley Elementary School on August 8,2022
- Humphry the Hamster (sensory toy) Classroom Expectations dated August 17, 2022
- Staff meeting agenda and notes dated August 29, 2022 regarding additional proactive strategies
- Staff meeting agenda and notes dated September 6, 2022 regarding providing additional supervision and planning around recess time.
- Para Educator Notes dated between September 7, 2022 through October 24, 2022

- Email written by Ms. Sonderegger to the parents dated September 9, 2022 at 4:30 p.m. regarding plan for structured recess
- IEP team meeting agenda and notes dated September 19, 2022 regarding review / revision of proactive strategies
- Draft copy of the IEP dated September 19, 2022
- Email from the mother to Katie Sonderegger, Farley Elementary School Principal, dated October 6, 2022 at 5:41 p.m.
- Meeting notes dated October 24, 2022 written by Kevin Raley, Director of Special Education
- Request for Autism Consultant to observe the student and provide feedback written by Allison Salsbery, Para Educator, dated October 24, 2022
- Encounter Summary dated October 25, 2022 from Pediatric Associates of Topeka, Kansas
- Notification of expedited due process hearing dated October 25, 2022
- Email from Mrs. Sonderegger to the parents dated October 25, 2022 at 8:55 p.m.
- Due Process Timeline
- Manifestation Determination Review dated October 28, 2022
- Due Process Settlement Agreement dated November 18, 2022
- IEP dated November 21, 2022
- ESI Reports from the 2022-23 school year
- Documented Response to Formal Written Complaint dated December 16, 2022 written by Scott McWilliams, Superintendent
- District Response to the Allegations dated January 17, 2023
- Email from the mother to the Complaint Investigator dated January 22, 2022 at 1:07 p.m. including dates of disciplinary exclusions during the 2022-23 school year
- USD #437 School Board Policy EBCA: Vandalism

Note that multiple emails and documentation related to issues that occurred during the 2021-22 school year were also reviewed and considered as background information.

Background Information

This investigation involves an eleven-year-old student currently enrolled in the fifth grade in USD #437. At the age of seven, he was diagnosed with Autism Spectrum Disorder by Melissa Campbell, Psy.D. at Children's Mercy Division of Developmental and Behavioral Services. The student also has clinical diagnoses of social anxiety and sensory processing disorder. The student receives privately paid therapy from Amanda Nestler, Licensed Master Social Worker, on an ongoing and regular basis.

The student has attended school in USD #437 since preschool. He attended Wanamaker Elementary School starting in kindergarten through the end of fourth grade. USD #437 assigned him to Farley Elementary in August just prior to the start of the 2022-23 school year in order to have a "fresh start" because he displayed a significant increase in inappropriate and aggressive behaviors in the school setting during fourth grade. The student has attended school virtually since November 21, 2022 receiving specialized instruction and social work services on a weekly basis to address social emotional learning, social skills, and social cognition.

The student was initially evaluated at the end of first grade on May 20, 2019 but did not meet the eligibility criteria to be eligible for special education because there was no academic impact or needs at that time. The student was evaluated again on January 11, 2021 during third grade and was found eligible for special education and related services under the exceptionality category of Autism. He has received special education and related services since that time.

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 #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to protect the student's personally identifiable information, specifically by allowing school staff to video record the student's behavior on their personal cell phone(s) during the 2022-23 school year.

Positions of the Parties

The complainants alleged that Katie Sonderegger, Principal at Farley Elementary School, used her personal cell phone to record the student on October 25, 2022. The parents reported the student was in an emotional state and having a crisis in the school social worker's office when the principal video recorded the student's image and stated his name while recording.

The parents stated,

> Mrs. Sonderegger ignored the student's heightened state of crisis and chose to video record what she described later as "damage" in the room, instead of following the BIP [Behavior Intervention Plan] and de-escalation strategies to assist in regulating the student. Mrs. Sonderegger falsely described the student in her report as "a danger to himself and others" and ignored protecting not only the student but the entire school by disregarding her own "observation" to pull out her phone to record. Furthermore, during the recording, she reported saying the student's name but denies that the video showed the student.

The parents indicated that Mrs. Sonderegger never disclosed the use of the cellular device or the video in her incident report or any correspondence regarding the crisis incident. However, at the Manifestation Determination Meeting held on October 28, 2022, Mrs. Sonderegger stated that she had pulled out her cell phone to record the damage to room, not to record the student and that she had said something like "student, that's not ok."

The parents are upset that they were unaware of the existence of this video recording until its disclosure at the Manifestation Determination Meeting on October 28, 2022. They are also troubled that Mrs. Sonderegger failed to allow the parents to view the video recording and deleted it without documenting that she had the cell phone with her during the incident, that a video recording was made, and that the video recording was deleted. The complainants note they have never been given the reason for discarding this educational record of the student. The parents believe that the actions of Mrs. Sonderegger violated the student's right to privacy and confidentiality.

The district indicated it was aware that the staff member used her personal cell phone to make a recording while the student was in the school social worker's office on October 25, 2022. Based on an investigation, officials at USD #437 noted that the intent of the staff member was to document the damage to the room and school property in order to report in accordance with USD 437 District Policy EBCA. The district acknowledged that this may not have been the best time to attempt to record the damage since the student was still in the room; however, the student was not on camera until he threw something at the staff member causing the camera to move and record him.

USD #437 reported that once the student was inadvertently recorded, which was never intended, the staff member deleted the video recording to ensure the student's privacy. The district believes that the recording made by the staff member, the video itself, its deletion, or lack of reporting to parents is not a violation of the student right to privacy and confidentiality

because the purpose of the recording was as a personal memory aid and not as an educational record collected and maintained by USD #437.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The student was involved in a crisis situation on October 25, 2022 in the school social worker's office while in an emotional state. Items in the school social worker's office were knocked off shelves and thrown at staff members. A large item was thrown at the principal resulting is a large bruise to her forearm. The student ripped and broke personal items, shoved chairs over, and attempted to turn over a table. The student tore things off the walls and purposefully dumped crates of resources onto the floor. In addition, the student attempted to break and take apart the microwave and phone which resulted in these items being unplugged for the student's safety. The student also attempted to elope from the office area.

The email dated October 25, 2022 at 8:55 p.m. written by Ms. Sonderegger to the parents includes a summary and description of the events that occurred but does not mention a video recording being made during the incident.

Mrs. Sonderegger acknowledged that she did make a video recording on her cell phone during the incident that occurred on October 25, 2022. She indicated the purpose of the cell phone video was to record the damage to the social worker's office for reporting purposes. Ms. Sonderegger reported the student's image was inadvertently and momentarily captured on the video and that she said the student's name while videotaping. However, she also stated that the video no longer exists because it was deleted from her phone because it was no longer needed.

USD #437 School Board Policy EBCA requires school staff to immediately report any incidents of vandalism to their immediate supervisor.

Applicable Regulations and Conclusions

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, the information captured on the video recording on October 25, 2022 would be considered personally identifiable information.

Federal regulations at 34 C.F.R. 300.624(a) require public agencies to inform parents when personally identifiable information that is collected, maintained, or used is no longer needed to provide educational services to the child and will be destroyed.

Federal regulations implementing the Individuals with Disabilities Education Act (IDEA), at 34 C.F.R. 300.613(a), require school districts to permit parents to inspect and review any education records containing personally identifiable information related to their child, which are collected, maintained, or used by the agency. School districts must comply with a request without unnecessary delay and before any meeting regarding an IEP, and in no case more than 45 days after the request has been made.

Federal regulations at 34 C.F.R. 300.611(b) state that education records mean the type of records covered under the definition of 'education records' in 34 C.F.R. part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1947 (FERPA)). 34 C.F.R. part 99 states that "education records " are records that are (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for or on behalf of the agency or institution. "Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, and microfiche." Personal notes made by teachers and other school officials that kept in the sole possession of the maker and not shared with others are not considered education records. Additionally, law enforcement records created and maintained by a school or school district's law enforcement unit for a law enforcement purpose are not education records.

In this case, there are three issues related to the video recording made on Mrs. Sonderegger's personal cell phone. The first issue relates to parent consent and the disclosure of the video recording to the parents. The second issue is whether or not the LEA appropriately responded to the parents' request for access to the video recording and the third issue is whether or not the video recording was an educational record pertaining to the student.

The IDEA does not include any requirements for the LEA to obtain parent consent prior to collecting an educational record or any requirement that the parent must be informed when an educational record is created. However, federal regulations at 34 C.F.R. 300.624(a) do require parental notice when an educational record collected, maintained, or used by the LEA will be destroyed. In this case, the parent was clearly not informed of the destruction of the video recording; however, a determination as to whether the video recording was an "educational record" must still be made.

In regards to the second issue, federal regulations at 34 C.F.R. 300.613(a) require USD #437 to provide the parent with access to the educational records used by the school district without unnecessary delay and in no case more than 45 days from the date of the request. In this case, it appears that the parents requested access to the video recording during the Manifestation Determination Meeting held on October 28, 2022 and that the district responded to the parent request on that same date informing the parents that the video no longer existed and was therefore unavailable to be shared.

In order for the video recording to be considered an educational record, federal regulations at 34 C.F.R. part 99 require that the record to be (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for or on behalf of the agency or institution.

In this case, the video recording is directly related to the student as the student's image was recorded and his name stated in the video recording that was made to document the damage he caused in the social worker's office on October 25, 2022. However, the reported purpose of the video recording was to serve as a personal memory aid for the principal to use when reporting the incident of vandalism per school board policy. It is noted that the video recording was subsequently deleted and was therefore not maintained by the LEA or the principal. Based on this information, the video recording would not meet the requirements to be considered an educational record.

Based on the foregoing, a violation of the IDEA requirements for protecting the privacy of the personally identifiable information of the student is not substantiated.

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(s) as written, specifically the 1-1 paraprofessional support, the behavior intervention plan (BIP) and accommodations related to behavior during the 2022-23 school year.

Positions of the Parties

The complainants alleged that the staff at Farley Elementary School failed to follow the student's IEP which caused numerous disciplinary situations resulting in emergency safety interventions (ESI) and suspensions from school. The parents specifically referenced the failure of USD #437 to provide 1-1 paraprofessional support during recess on August 17 and August 26, 2022; failure of USD #437 to provide the accommodations listed in the IEP; and the failure of USD #437 to implement the student's BIP, specifically the recess plan and providing access to preferred sensory materials.

The parents indicated that USD #437 changed the student's building assignment from Wannamaker Elementary School where he attended for five years to Farley Elementary School in order to provide the student with a "fresh start" in the 2022-23 school year. The parents were notified of this building assignment on August 7, 2022 with the first day of school being August 11, 2022. The parents reported they were not in agreement with the change in building assignments but were told by USD #437 administrators that the student's building assignment was a district decision since the change would not impact the special education services described in the current IEP.

Once school started again, the parent reported the student almost immediately began to display the same type of negative behaviors at Farley Elementary as were seen at the end of the 2021-22 school year at Wannamaker Elementary School. The mother believes this was caused by the student not knowing any staff or peers at the new school and the IEP and BIP developed in May 2022 at Wannamaker Elementary School was not implemented by the staff at the new school. The parents believe the student felt distrustful at his new school which has caused his behavior to spiral and become increasingly more frequent and severe. The parent's believe that if the district had implemented the IEPs proactively as written, the student would not have displayed the escalating behaviors resulting in multiple disciplinary actions.

The district responded that the staff at Farley Elementary School did implement the May 16, 2022 IEP and BIP with fidelity during the 2022-23 school year. The staff provided numerous services, supports, and interventions to assist the student to be successful at Farley Elementary School.

USD #437 believes the staff at Farley Elementary School implemented the May 16, 2022 IEP as written during the 2022-23 school year and continuously worked with parents to discuss the student's inappropriate behavior and clarify the precursor, setting events, and antecedents

that triggered the student's problem behavior as well as the proactive and reactive strategies to be implemented when the behavior occurred.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

There have been two IEPs in effect for the student during the 2022-23 school. The second IEP was in effect starting November 21, 2022 through the present time. It was developed on that same date as a result of a mediation agreement between the parents and the LEA to settle an expedited due process hearing. The parents made no allegations related to this IEP.

The first IEP was in effect between August 11 and November 21, 2022 and was developed on May 16, 2022 with the parents in attendance. This IEP requires 310 minutes per week of specialized instruction in the special education setting; 400 minutes per week of specialized instruction in the general education setting; 125 minutes per week of "attendant care - a non-instructional para educator" in the general education setting; 20 minutes per week of social work services in the special education setting; and 300 minutes per week of special transportation.

The Farley Elementary School schedule begins at 8:45 a.m. and ends at 3:45 p.m. on regularly scheduled school days for a total of 420 minutes per day. Based on the special education and related services required in the IEP, the student was provided with specialized instruction in the special education setting for 330 minutes per week (16% of the time); with specialized instruction and support in the general education setting for 525 minutes per week (25% of the time); and no special education instruction / support for 1070 minutes per week (59% of the time). It is noted that the IEP does not require a 1-1 para educator with the student in all settings throughout the entire school day.

The chart below shows the May 16, 2022 IEP accommodations that were to be provided to the student and a summary of the documentation USD #437 provided to substantiate that the accommodation had been provided during the 2022-23 school year:

Accommodation	Location	Frequency (when)	Duration (length of accommodation)	Summary of USD #437 response and documentation
Allow time for organization of materials	All subjects	At each task or subject transition	Until materials are organized	Morning Meeting was the designated time in the fifth grade classroom when students organized their materials. A Daily Schedule was posted on classroom whiteboard showing "Morning Meeting".
Visual or list of coping and calming strategies	All subjects	Daily and when feeling overwhelmed or anxious	Until he is feeling calm and self-regulated	Zones of Regulation and targeted coping strategies and tools were used building-wide to support appropriate behavior. Posters were placed throughout the building and in each classroom showing the "tools" to use for each of the four zones (Blue, Red, Green, and Yellow). In addition, the student had a visual for a "hamster break" on his desk until the hamster was no longer allowed at school because it had become a distraction and trigger for inappropriate interactions with peers.
Alert student to transitions	All subjects	Before each transition	2-3 minutes before transition occurs	A Daily Schedule is posted on the classroom whiteboard showing the schedule of activities for the school day. In addition, the social worker had a morning check-in with the student where the daily schedule was reviewed. School staff reportedly gave verbal cues for transitions between activities.
Option to take assessments in small group setting	All subjects	For each assessment	Until assessment is complete	Separate, private study carrels were accessible in the CHAMPS classroom if the student chose to take any assessment in a small group setting.
Option to use noise cancelling headphones	All subjects	When student feels over-stimulated by noise	Until the noise level is reduced	Staff report the student regularly used the noise canceling headphone in the special education classroom when younger students were being noisy.

Accommodation	Location	Frequency (when)	Duration (length of accommodation)	Summary of USD #437 response and documentation
Option for barrier to block visual and auditory distractions	All subjects	When the student is distracted by his surrounding in a classroom setting	Until the task is complete	Portable cardboard study carrels were available to any student in the classroom to place on their desk if desired. In addition, the separate, private study carrels in the CHAMPS classroom was available to the student to use if requested.

This IEP also includes a behavior intervention plan (BIP) which identifies the problem behaviors as well as describes the precursor, setting events, and antecedents that trigger or predict that the student will display a problem behavior. The BIP identifies the function of the student's behavior as avoidance as well as a "function of his disabilities (Autism Spectrum Disorder, social anxiety, and sensory processing disorder) and related lagging skills in cognitive flexibility, social thinking, and emotional and self-regulation." The BIP also includes both proactive and reactive strategies be implemented and also requires training for staff.

The recess plan in the BIP states,

> The student has para support during recess. After recess, the student will reflect/self-monitor with the adult who has been with him at recess. The reflection will center around skills such as having positive conversations, being able to share, take turns, etc. and appropriate body control for the activity. If there has been an incident of physical aggression at recess, the student and staff will follow his structured recess plan. The plan is for the student to have 5 days of structured recess where he will engage in positive social interaction while learning and practicing some pro-social skills. After the 5 days, the team would re-evaluate the next steps with the plan to eventually fully re-integrate in recesses with his peers.

The complainants specifically described an incident which occurred on August 17, 2022 where the 1-1 para educator was not with the student during recess and a peer bullied the student which resulted in the student becoming dysregulated. The student subsequently disrupted and destroyed the classroom. The complainants also referred to an incident that occurred on August 26, 2022 during recess where the 1-1 para was unaware of the student being bullied by another student and did not intervene prior to the student displaying inappropriate behavior towards a peer.

The Manifestation Determination Review described the August 17, 2022 incident as follows:

> The student became escalated at recess and came into the classroom upset. He destroyed the classroom, ruining many school and personal items of the students' and teacher. The parents note that earlier in the day the student had been called names by another student. They also note there is no confirmation that there was a para present at that recess.

USD #437 believes the para educator was with the student during recess on August 17, 2022 but acknowledged that there is no documentation to support this. Because of this lack of documentation, the student's assigned para educator started keeping daily logs of the student's behavior beginning on August 23, 2022, which focused on first recess, band, and second recess, the unstructured times of the school day where the student struggled the most with his behavior.

The Behavior Log described the August 26, 2022 incident as follows:

> At recess, the student got extremely close to another student who then pushed him away. The student then wandered around the tree line for several minutes while looking at both the other student and the para educator assigned to him at recess. When the para educator turned her head away to survey another group of students, the student took this opportunity and charged the other student, tackling him to the ground. He then proceeded to get up and stomp the student on the head with his foot several times.

Interviews and documentation show the recess plan was put into effect on Monday, August 29, 2022.

The BIP includes several reactive strategies that staff should implement when the student is becoming dysregulated and overwhelmed and specifically requires that the student "be provided with access to his preferred sensory materials/activities. The parent reported,

> August 2022, the student was prevented from being able to be provided access to preferred sensory materials as written in his BIP. The student had identified a small stuffed hamster, prior to being forced to transition to Farley Elementary School as a comforting sensory object, often utilized for his anxiety and utilized when stemming. After more than one incident of bullying at Farley that led to [discipline] incidents, the student was informed by the social worker he was no longer allowed to provide his sensory item at school.

USD #437 reported the student was initially allowed to bring his stuffed sensory toy, "Humphry the Hamster", to school to help him be comfortable and focused during the school day. School staff reported,

> However, as time went on, the toy was used less frequently for stimming or soothing purposes, and instead as a tool to distract other students or gain attention form students or staff. This typically manifested by the student throwing Humphry into the ceiling tiles or onto other students' desks while they were trying to complete work. Students would then often get frustrated or annoyed and ask the student to stop, tell him he was being annoying, or complain to the teacher. We do not consider these responses to be evidence of bullying behavior towards the student but instead age-appropriate responses to distracting and interfering behavior . . . Mrs. Reynoso [social worker] continued to offer the student sensory breaks and other sensory toys, puzzles, and games – the student would frequently take these items to class as well and were less distracting for him and his peers.

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.

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(4) require school districts to include a statement of the individualized program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual IEP goals; to be involved in an make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

In this case, the parents specifically alleged USD #437 failed to provide the 1-1 para educator. However, the May 16, 2022 IEP does not require a 1-1 para educator be with the student throughout the entire school day. This IEP only requires para educator support in the general education setting for 125 minutes per week and the BIP requires the student to have a para during recess as part of the recess plan.

The parents also allege that the accommodations listed in the IEP during the 2022-23 school year were not implemented at Farley Elementary School. Documentation and interviews found that the majority of the accommodations provided for the student were Tier one / universal accommodations which are available for all students and not individualized for the student.

For example, USD #437 reported that the student used "morning time" in the classroom to organize his materials; however all fifth grade students used this time for the organization of materials. The student's IEP accommodation required the organization of materials to occur at "each task or transition" throughout the school day, not just at the beginning of the school day.

Another example would be the building-wide use of the Zones of Regulation and posters displayed around the building and classroom which USD #437 indicated as the accommodation provided in the IEP for the listing of coping/calming strategies. Again, this is a Tier one / universal accommodation for all students in the building and not an individualized listing of the coping/calming strategies specific to the student to choose from when he was dysregulated.

The parents also alleged USD #437 failed to follow the recess plan included in the BIP. The recess plan does state that the student is to have a para educator with him at recess and includes a plan for a "structured recess" if inappropriate behavior occurs.

In this case, USD #437 acknowledged that there was no documentation to support that the student had access to a paraprofessional with him at the August 17, 2022 recess. Following the disciplinary incident that same day, the district responded appropriately by reviewing its procedures and practices and creating a new procedure to collect data as well as document this behavioral support was in place during recess on a daily basis.

Documentation shows the para was at recess with the student when the disciplinary incident occurred on August 26, 2022. The interviews and documentation show the student deliberately waited until the para educator was distracted before using that opportunity to attack another student. Following this situation, the structure recess plan was implemented the following Monday. It should be noted that the BIP does not guarantee that the student will never display inappropriate behavior; instead the BIP includes both proactive and reactive strategies/plans designed to support and teach the student in an effort to increase the instances of appropriate behavior.

The district argues that court cases have found that the law does not require "perfection" so that, even if a para educator was not present during recess on August 17, 2022, there would

be no violation of failing to implement the IEP or providing a free appropriate public education (FAPE) to the student. While it is not certain if one instance of USD #437 failing to provide para support during recess results in a failure to provide FAPE, these are definitely instances where the IEP was not implemented as written which is the requirement of federal regulations at 34 C.F.R. 300.323(c)(2) and Kansas state regulations at K.A.R. 91-40-19(a).

Also In relation to the failure to follow the BIP, the parents reported that, beginning in August 2022, the student was prevented from accessing his preferred sensory support item, a small stuffed hamster. Interviews and documentation show the student was allowed to bring the hamster to school as a preferred sensory material at the beginning of the school year. However, when the hamster became a distraction for both the student and his peers in the classroom, use of the hamster was denied and other sensory strategies and materials were introduced and used by the student.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to implement the student's IEP, specifically the individualized accommodations listed in the IEP and the para educator support during recess on August 17, 2022 during the 2022-23 school year

ISSUE THREE: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the student's IEP during the 2022-23 school year in response to bullying incidents.

Positions of the Parties

The complainants alleged the student suffered from significant bullying from peers when he transferred to Farley Elementary School in August 2022. The parents believe this bullying combined with the lack of staff's response to the bullying resulted in the student responding to the bullying with inappropriate behavior. This inappropriate behavior then caused the student to be disciplined with out-of-school suspensions which resulted in manifestation determination meeting. The parents reported that after reviewing the situation and the facts, it was determined that the inappropriate behavior was a manifestation of his disability. The parents believe that if USD #437 had responded appropriately to the bullying episodes, the student's behavior would not have escalated in the school setting during the 2022-23 school year.

USD #437 noted that Kansas regulations at K.S.A. 72-6147 define "bullying" as any intentional gesture or intentional written, verbal, electronic or physical act or threat either by any student, staff member or parent towards a student or by any student, staff member or parent towards

a staff member that is sufficiently severe, persistent, or pervasive that such gesture, act, or threat creates an intimidating, threatening or abusive educational environment that a reason person, under the circumstances, knows or should know will have the effect of harming a student or staff member, either physically or mentally; damaging a student's or staff members property; placing a student or staff member in reasonable fear of damage to the student's or staff member's property; cyberbullying; or any other form of intimidation or harassment prohibited by the board of education school district policies.

USD #437 stated,

> Peer conflict or aggression should not be confused or conflated with bullying. As opposed to bullying, peer conflict is a mutual disagreement or hostility between peers that occurs occasionally and is not planned. These are the types of interactions that occurred between the student and his peers at school. His peers were not seeking him out or targeting him, but rather were responding to situations that either the student or they initiated, which is a conflict in social situations, not bullying. Therefore, while the school addressed the situations, they did not address them as bullying because they were not bullying.

School staff noted that numerous conferences were held with the parents following the disciplinary incidents to discuss the student's behavior, clarify expectations and procedures, and review proactive strategies between August and November, 2022. The district indicated the IEP team first met on September 19, 2022 to review/revise the student's IEP and a recommendation for a smaller more structured setting was proposed; however, the parents refused to provide consent for any change of services or change of placement.

The LEA believes that the IEP team did their best to prepare and implement an IEP which would enable the student to be safe and develop skills around self-regulation and navigating interpersonal relationships, while also advocating that the student required a smaller and more structured setting to be safe and successful.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The findings of Issue Two are incorporated herein by reference.

Interviews and documentation show that multiple conferences with parents and school staff were held following the disciplinary incidents to discuss the student's behavior, clarify

expectations and procedures, and review proactive strategies between August and November, 2022. The IEP team first met on September 19, 2022 to review/revise the student's IEP and proposed a smaller more structured setting but the parents refused to provide consent for any change of services or change of placement.

The behavioral concerns continued to escalate in frequency and intensity in October resulting in the student being out-of- school suspended for more than 10 cumulative school days with a pattern. A manifestation determination meeting was held on October 28, 2022 with the decision that the behavior resulting in the disciplinary actions was related to the student's disability.

USD #437 then filed for an expedited due process hearing in order to change the student's placement to an interim alternative educational setting. Through mediation, a settlement was reached for the student to receive his education virtually with social work and specialized instruction for social skills training provided on a weekly basis. An IEP for this placement and services was written on November 21, 2022.

Applicable Regulations and Conclusions

The IDEA does not define bullying so no findings will be made in regards to whether the student was bullied or was not bullied during the 2022-23 school year in USD #437.

However, the 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 not less than annually, to determine whether the annual goals for the student are being achieved and to revise, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum; the results of any reevaluation, information about the student provided to or by the parents; the student's anticipate needs; or any other matters.

In this case, there was ample reason for the IEP team to meet regardless if it was the result of bullying, inappropriate behavior at school, or the disciplinary infractions. Interviews and documentation show that USD #437 did attempt to review and revise the student's IEP. Staff meet with the parents on multiple occasions to discuss the IEP and BIP between August and November 2022. The district followed the appropriate procedures and held an IEP team meeting on September 19, 2022 to discuss concerns and to develop a more appropriate plan; however, the parents refused to provide consent for any changes. USD #437 staff continued to meet with the parents until such time a manifestation determination meeting was required due to a disciplinary change of placement. Following the district filing for an expedited due

process hearing, the parents and USD #437 were able to reach a settlement agreement through mediation for the appropriate program to provide the student FAPE. USD #437 is currently implementing this IEP.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing review and revise the student's IEP during the 2022-23 school year in response to bullying incidents.

ISSUE FOUR: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to train staff on de-escalation strategies during the 2022-23 school year.

Positions of the Parties

The complainants alleged USD #437 did not provide staff with training in the proactive strategies for working with the student and how to engage with him in positive way as well as training to recognize his precursor behaviors and "triggers" during the 2022-23 school year.

The district staff reported they were trained not only in general principals of de-escalation and crisis prevention / intervention but also specifically on the student's IEP and BIP. These trainings occurred prior to the school year starting and involved meeting with previous school staff as well as the on-going review and clarification of procedures and practices related to implementing the IEP and BIP

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The findings of Issue Two and Three are incorporated herein by reference.

The BIP states, "Staff need to be trained in the proactive strategies for working with the student and how to engage with him in positive ways. They also need to be trained to recognize his precursor behaviors and "triggers".

The BIP lists the following proactive strategies that staff should use to prevent problem behaviors:

- Adults new to working with the student should work to establish a connection/relationship with him
- Zones of Regulation training and practice
- Proactive plans for a substitute teacher is in his classroom
- Break card system to request a break nonverbally
- Reinforcement system with daily behavior data tracking
- Structured and visual schedule of his day with preparation and/or coaching regarding anticipated changes as well as stressful or exciting events
- Social Skills curriculum in the resource room to learn and practice skills such as expected / unexpected behaviors, perspective taking, active listener skills, scaling the size of the problem, social awareness and adaptability
- Additional lessons/coaching regarding engaging in positive interactions with peers, how to appropriately engage with peers and adults, and how to appropriately disagree with peers and adults
- Stating expectations and ensuring the student is aware and understands these clearly
- Activities to practice expectations that include movement that is rhythmic, repetitive, and patterned
- Using visual representations of expectations and identifying his energy as high, low, or in between
- Using the language of high, low, and in between to describe his energy. For describing boundaries, it is framed as "busting boundaries vs respecting boundaries"; the word "pause" is used when expectations and boundaries are challenging and a break is needed to reset.
- If stimming behavior is becoming loud or otherwise disruptive, let the student know his options for an alternative location
- Humor and conversation about the student's preferred topics (currently hamsters) can be good ways to redirect his attention and de-escalate a situation.

Based on interviews and documentation, the chart below shows the training provided to the staff at Farley Elementary School during the 2022-23 school year:

Date	Training Provided	Details	Staff Included
8/5/22	Basic De-Escalation	All school based mental health staff were provided training on basic de-escalation strategies and practices.	Social worker, school psychologist and elementary school principal at Farley Elementary School
8/8/22	Tier 1 Behavior Plan	All staff were trained on the school-wide behavior system which focuses on explicitly teaching expectations, actively monitoring student behavior, providing positive reinforcement, and using proactive strategies to prevent escalation.	All Farley Elementary School staff
8/8/22	Zones of Regulation	Staff were trained on how to implement Zones of Regulation to help students identify their feelings and learn strategies to self-regulate. The expectation is that all classrooms start their day with individual student check-ins and morning meetings as a way to help students mentally prepare for the day.	All Farley Elementary School staff
8/8/22	Special Education IEP Overview	Special education teachers met with classroom teachers and support staff to go over details of student accommodations/BIPs, and IEP goals.	All Farley Elementary School staff

Date	Training Provided	Details	Staff Included
8/8/22	Student's Team Meeting	The student's new Farley Elementary School staff met with Wanamaker Elementary School staff to discuss his transition to new building and how to implement the BIP and IEP.	The Dean of Behavioral Services. the Wanamaker Elementary School principal and school psychologist, and the Farley Elementary School special education teacher, fifth grade classroom teacher, social worker. and school psychologist.
9/26/22	Crisis Prevention and Intervention (CPI) Training	Comprehensive, full day training from Crisis Prevention Institute in behavioral de-escalation and crisis response	Farley Elementary School social worker
10/4/22	CPI Training	Comprehensive, full day training from Crisis Prevention Institute in behavioral de-escalation and crisis response	Para educator assigned to work with the student at Farley Elementary School

In addition, USD #437 reported multiple meetings with parents and school staff between August and November 2022 to specifically review procedures and practices related to implementing the student's IEP and BIP with fidelity. These discussions and clarifications are considered individualized ongoing training for school staff who worked with the student on a regular basis.

Applicable Regulations and Conclusions

Again, 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 support a finding that USD #437 did provide appropriate training for the school staff working with the student. Training on the general theory and practice of de-escalation was provided as well as training specifically focused on the student's IEP and BIP. When the student's behavior continued to increase in frequency and severity, USD #437 responded appropriately by meeting to specifically review and clarify the procedures and practices being used to implement the student's IEP.

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), and BIP by not providing the required training to staff during the 2022-23 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 implementing the IDEA 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, interviews and documentation found the USD #408 failed to provide the special education staff support in the general education setting for Student A for 25 minutes per day for 84 days during the first semester of the 2022-23 school year resulting in Student A not receiving a total of 35 hours of specialized instruction required by the April 13, 2022 IEP. In addition, Student B was not provided with 90 minutes per day for 84 days during the first semester of the 2022-23 school year resulting in Student B not receiving a total of 126 hours of specialized instruction required by the August 24, 2022 IEP amendment. In addition, Student A's IEP accommodation for using regulation tools and strategies until the student has regained emotional control was not implemented during the incident that occurred on September 15, 2022.

Based on the foregoing, USD #437 is directed to take the following actions:

1) Within 30 calendar days of the date of this report, USD #408 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 IDEA 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.
2) No later than February 20, 2023, USD #437 shall contact TASN to request that TASN conduct a training for the special education staff, school psychologist, social worker, and administrators at Farley Elementary School regarding the IDEA requirements related to individualized accommodations and modifications for students with disabilities. No later than five days after the completion of the TASN training, 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.
3) No individual corrective action is ordered regarding the failure to implement the IEP as written because the IEP team met on November 21, 2022 and agreed to make significant changes in services and a substantial change of placement for the student in order to provide FAPE to the student.
4) 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) written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f) as described below.

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, M.Ed., 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 #204
ON JANUARY 17, 2023
DATE OF REPORT FEBRUARY 17, 2023

This report is in response to a complaint filed with our office on behalf of the student by his parents, Mother and Father. In the remainder of the report, the student will be referred to as "the student." It should be noted that due to his adoption, his name is in the process of being legally changed from Nolan Clark to Jaxon Clark. The student's mother is Mother and in the remainder of this report they will be referred to as "the mother," "the parent" or "the complainant." Father will be referred to as "the father." Together, Mother and Father will be referred to as "the parents" or "the complainants."

The complaint is against USD #204, Bonner Springs Edwardsville Public Schools. It is noted that Wyandotte Special Education Cooperative provides special education services for USD #204, Bonner Springs Edwardsville Public Schools. In the remainder of the report," the "school," the "district," "the cooperative" and the "local education agency (LEA) shall refer only to USD #204."

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 17, 2023 and the 30-day timeline ends on February 17, 2023.

Investigation of Complaint

Donna Wickham and Gwen Beegle, Complaint Investigators, contacted the parents by telephone on January 20, 2023 and January 23, 2023 to clarify the issues of the complaint. Two calls were made as the district had asked for a second meeting to complete the student's IEP. Gwen Beegle interviewed the parent on February 9, 2023.

The following other persons were interviewed:

- Rebecca Lambert-Lugo, Special Education Coordinator #204 on February 3, 2023

- Stefani Drieling, Principal, McDanield Preschool Center, USD #204 on February 3. 2023. Follow up interview on February 7, 2023
- Ja'Kyra Lawrie, Director, Wyandotte Special Education Cooperative on February 3, 2023
- Kathy Otto, Advocate, Advocacy in Motion on February 6, 2023
- Kimberly Bolewski, School Nurse, #204 on February 6, 2023
- Kathy Otto, Advocate, Advocacy in Motion on February 6, 2023
- Jessica Levin, Phoenix Home Care on February 9, 2023

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

- Email from Robin (Waunita) Smotherman, Secretary, USD 204 to the mother dated March 23, 2022 at 11:19 am
- Email from the mother to Ms. Smotherman dated April 13, 2022 at 11:19 am
- Email from Ms. Smotherman to the mother dated April 14, 2022 not time stamped
- Email from Rebecca Lambert-Lugo, Special Education Coordinator #204 to the mother on August 22, 2022 at 12:49 pm
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent (PWN) dated September 1, 2022 and signed by parent on September 8, 2022
- Notice of Meeting (NOM) dated December 13, 2022
- Exchange of Information Request by the district for Playabilities dated December 13, 2022
- Unsigned Procedural Safeguards to Protect Parents Rights checksheet, dated January 6, 2023
- Initial Evaluation/Eligibility Report dated January 6, 2023, with these appended individual reports: WCSEC Occupational Therapy Evaluation by Rachel Arnold, Cincinnati Children's Neuropsychological Report by Thea Quinton (dated 4/26/22), WCSEC Comprehensive Psychoeducational Report by Roddajia Turner, WCSEC Feeding and Swallowing Assessment by Melanie Dunn Coate, Evaluation Information by Kellie Bezio.
- Draft Individualized Education Plan (IEP) dated January 6, 2023
- IEP Meeting Notes and Summary dated January 6, 2023
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated January 13, 2023

- The district's response to the complaint allegations dated February 1, 2023
- Email from Dr. Lawrie (Director, Wyandotte Comprehensive Special Education Cooperative) to Kansas Special Education Investigators dated February 3, 2023 at 5:04 pm
- Email from Ms. Lambert-Lugo to Kansas Special Education Investigator dated February 10, 2023 at 1:21 pm

Background Information

This investigation involves a 4-year-old student who was referred for an initial special education evaluation by his parents in spring 2022. He has been medically diagnosed with Shwachman Diamond Syndrome, a complex syndrome characterized by enzyme, growth, digestive, skeletal, and bone marrow problems and associated with intellectual delays, behavioral problems, and autism. The student was treated with bone marrow transplant at age 13 months and according to the parent, he was hospitalized for about a year and a half for his bone marrow transplant and other health conditions. He has been cared for at home by his parents with the support of outpatient nursing, physical therapy, speech language therapy, and occupational therapy services. He has a feeding tube through which he receives 60% of his nutrition, and his eating by mouth is limited by sensory processing and digestive issues. Administration of his several medications is through the feeding tube. According to his parents, he has been medically diagnosed with Pica and Sensory Processing disorder. He has been medically diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD), Combined Presentation. The student has delays in language, motor skills, cognition, and adaptive behavior, according to his Cincinnati Children's neuropsychological report. The report also documents his impulsivity and hyperactivity, and suggests that the student should be formally evaluated for autism because he "shows several characteristics associated with a diagnosis of Autism Spectrum Disorder (ASD). According to the parent, on February 10 University of Kansas specialists diagnosed the child with ASD level 3, global developmental delays, speech and language receptive processing disorder and confirmed the prior ADHD combined type diagnosis.

ISSUE ONE: The USD #204, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

Positions of the Parties

The complainant alleged that the district failed to complete relevant elements of the evaluation within the 60-day time frame. The parents contacted the district via email in the spring of 2022 for enrollment into McDanield Preschool Center. They were informed that the evaluation should be delayed until the beginning of the fall session.

The district responded that the parents and district agreed to conduct the evaluation beginning of the 2022-2023 school year and therefore provided a Prior Written Notice at the beginning of the school year. The USD #204 school calendar was used to determine the timeline, counting Mondays through Thursdays when the preschool is in session. Parent consent was acquired on September 8, 2022 and the eligibility meeting was held on January 6, 2023, on day 55 of that timeline.

Findings of the Investigation

The parent reported that she contacted the school for enrollment and evaluation in March, 2022 or earlier in the year.

The parent reported that the district requested student enrollment in the district in order to begin the evaluation in a telephone conversation with the parent on or about March, 2022.

An email from the parent to the district on April 13, 2022 stated, "I would like to get the student's paperwork in this week, possibly next for enrollment so he can still have time to be evaluated before the end of the year."

The district responded to the parent on April 14 , 2022, "the evaluation team believes the student would be better served to have him begin his evaluation at the beginning of next school year. They don't feel that with the number of days remaining this school year would allow them to complete the evaluation.".

The district and coop staff agree that they had reason to suspect the child was a child with a disability and waived a child find screening to agree to conducting a special education evaluation.

According to Ms. Lambert-Lugo's recollection with family about the evaluation request was that the parent requested that the evaluation occur early in the 2022-2023 school

year due to the parent's health or Covid concerns. She interpreted that discussion was in effect a withdrawal of the parent's request for the evaluation at that time.

Ms. Dreiling reported that when the parent made the request for the evaluation in April there were no available April appointments and the May evaluation schedule was reserved for those students attending summer school. Thus, the PWN for evaluation was delayed till the next school year.

The district provided a Prior Written Notice (PWN) for evaluation September 1, 2022, and the parent signed and returned it on September 8, 2022

The district provided a Notice of Meeting (NOM) for the January 6, 2023 eligibility and IEP planning meeting to the parent on December 13, 2022

The initial Eligibility and IEP development meeting was held on January 6, 2023

Applicable Regulations and Conclusions

The 60-school-day timeline for evaluation began when the district received written parental consent to conduct the initial evaluation (34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f)). The district must then provide the parent with a Prior Written Notice, either proposing to conduct the requested evaluation or refusing to conduct the requested evaluation (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)). Under most circumstances, the Kansas State Department of Education considers 15 school days to be a reasonable time in which to respond to a parent's request for an evaluation.

In this case the parent provided an email dated April 13, 2022 showing that she requested a special education evaluation along with enrollment information. The district responded on April 14, 2022 to the email stating that an evaluation would be completed the following school year. This demonstrates that the district accepted the parent's written request as a request for a special education evaluation and the district's consideration of her request should have started April 13, 2022.

It is noted that the district and parent agreed that the start of the evaluation could begin the following school year and once the parent consent was obtained the district did complete the remaining steps of evaluation within 60 days. The violation was in not providing a Prior Written Notice agreeing to conduct the evaluation to the parent in a reasonable timeframe (15 school days per KSDE) and advising the parent to provide consent the following school year.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to respond to the request for the parent's request for a special education evaluation when originally requested in writing to meet the 60 day timeline for evaluation.

ISSUE TWO: The USD #204, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to secure parent approval to conduct an evaluation for special education and related services.

Positions of the Parties

The complainant alleged that the district did not ask for consent when attempting to schedule the observational component of the evaluation, as stated in Issue One. Additionally, the parents alleged that they did not receive procedural safeguards.

The district responded, "as evidenced by the signed consent form, parent consent to conduct the evaluation was obtained on 9/8/22." They further responded that it is their routine practice to provide procedural safeguards when sending out the Prior Written Notice to request consent for evaluation.

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 staff in USD #204.

The parent reports she did not receive a copy of the procedural safeguards following her request for an evaluation on April 13, 2022

The district reported that it is their practice to provide procedural safeguards to parents when providing the PWN responding to a special education evaluation request.

The PWN dated September 1, 2022 consenting to conduct an initial special education evaluation has a paragraph explaining the importance and rights of Procedural Safeguards to Protect Parent's Rights. Review of the document does not show a check box or any indication the Procedural Safeguards were provided with the PWN.

The January 6, 2023 IEP documents the parents received Parental Rights: 09/08/2022

In the interview the parent reported she does not have a copy of the Procedural Safeguards.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.300(a) and K.A.R. 91-40- 27(a)(1) the school must obtain informed consent from the parent of the child before conducting the evaluation. Further, parents must be provided procedural safeguards to help the family understand the process. Upon referral or parent request for an initial evaluation, regardless of the source, the first action the school must take is to provide the parents, or the adult student, a copy of the Parent Rights Notice (procedural safeguards) available to them (K.S.A. 72- 3430(e); 34 C.F.R. 300.503).

It is found that the district did obtain consent from the parents prior to conducting the evaluation as documented in the signed Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated September 1, 2022.

It is further found that it is more likely than not that at the January 6, 2023 IEP draft Procedural Safeguards were available. However, since the parent reports that the Procedural Safeguards were not received, whether previously provided or not, the district should provide the Procedural Safeguards to the parents as soon as possible.

As found in Issue 1, the parent made a written request for evaluation on April 14, 2022 and according to regulation the Procedural Safeguards should have been provided with a Prior Written Notice and Procedural Safeguards within 15 days of the April 14, 2022 evaluation request. Even when the district did provide a Prior Written Notice proposing an initial evaluation on September 1, 2022, there is no documentation that the Notice of Procedural Safeguards were provided to the parent at that time, other than the district stating it is their routine practice to provide Procedural Safeguards when proposing an initial evaluation.

Therefore, based on the foregoing, and the ruling in Issue 1 according to 34 C.F.R. 300.300(a) and K.A.R. 91-40- 27(a)(1) it is substantiated that the district failed to provide procedural safeguards when responding to an evaluation request by a parent.

ISSUE THREE: The USD #204, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent input into the evaluation process.

Positions of the Parties

The complainant alleged that the district did not involve them as team members in planning the initial evaluation when reviewing the records and determining what further assessments to conduct. The parent asserted that their concerns for the student's health and safety and their current outpatient services were not equally considered.

The district responded that "throughout the evaluation documentation, parent input was included in the process. The parent was involved in completing a developmental history, the parent rating scales of the BASC and the parent portion of the Vineland Adaptive Behavior scales with the school psychologist, the pediEAT through interview with the feeding specialist, the sensory Processing measure with the occupational therapist, and assisted the classroom teacher in completing the AEPS. Additionally, the parent provided medical reports from Cincinnati Children's which are included in the file."

Findings of the Investigation

The findings of Issues One and Two are incorporated herein by reference.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #204.

The parent reported she had conversations with the district beginning early in 2022 about the child's medical, behavior, social, and developmental history prior to making a request for an evaluation.

As noted in the findings of Issue One the Parent made a request for evaluation April 13, 2022.

As noted in the April 14, 2022 email the district responded that they would like to wait until next fall to conduct the evaluation due to scheduling times and the parent agreed to wait until the beginning of the 2022-2023 school year

The September 1, 2022 PWN stated,

Based upon a review of existing data (if appropriate), the IEP team (including the parent), is proposing to conduct an initial evaluation of your child. Information will be collected in the areas checked on the following page that provide relevant information that directly assists the team in determining: · whether your child is a child with an exceptionality and the educational needs of your child; · the present levels of academic achievement and related developmental needs of your child; and · whether your child needs special education and related services.

The September 1, 2022 Prior Written Notice proposed the following evaluation plan and the parent signed consent on September 8, 2022.

	Existing Data	Evaluation
Vision	x	
Hearing	x	
Health/Motor	x	x
Social emotional/Behavioral	x	x
General intelligence	x	x
Communication	x	x
Adaptive	x	x
Sensory	x	x
Feeding	x	x
Nursing/School Health	x	x

The district reported that as part of the evaluation they collected data from parent in each of these areas during the evaluation: developmental history and background information, interview for Occupational Therapy Evaluation including the Sensory Processing Measure-Preschool, Parent Rating Scale of the Assessment Evaluation and Programming System for Infants and Children III (AEPS), Vineland Adaptive Behavior Scales III, PediEAT for Feeding and Swallowing Assessment, School Health Information sheet for enrollment.

The parents and district agree that the parents contributed information to the developmental and medical history of the student, that the parents were interviewed, and that the parents completed parent portions of assessment instruments used in the evaluation as part of the evaluation process.

Applicable Regulations and Conclusions

The Kansas and federal regulations were written to recognize the importance of including families in many phases of the special education evaluation process.

Once the referral is made the district is obligated to review existing data to determine if the child has a suspected disability. The review of existing data, as part of the evaluation, may be conducted without a meeting with the parents K.A.R. 91-40-27(e); 34 C.F.R. 300.300(d)(1)). The purpose of reviewing existing data is to identify what additional data, if any, are needed to determine: a. if the child is a child with an exceptionality; b. whether the child needs special education and related services; c. the educational needs of the child; d. the present levels of academic achievement and functional performance (related developmental needs) of the child; and e. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (K.S.A. 72-3428(i)(2); K.A.R. 91-40-8(c); 34 C.F.R. 300.305(a)(2)) Once the team determines that an evaluation is warranted, parent consent should be obtained for the evaluation using a Prior Written Notice that includes a statement of the right of the parents to request additional assessments to determine whether the child is a child with an exceptionality.

Further, according to 34 C.F.R. 300.301 and K.A.R. 91-40-8 during the initial evaluation each agency shall ensure that members of the IEP team comply with the following: (1) review existing evaluation data, including the following: (A) evaluations and information provided by the parent; (B) classroom-based observations; and (C) observations by teachers and related services providers. (2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed.

It is found that the district made the decision to evaluate the student based on input from the parent during ongoing conversations both prior to and after the parent's request for the evaluation. Further, the parent signed the consent to evaluation based on the September 1, 2022 PWN and did not request additional areas of evaluation.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to allow parent input into the evaluation process.

ISSUE FOUR: The USD #204 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a comprehensive evaluation that addresses the specific concerns of the child.

Positions of the Parties

The complainant alleged that the district did not consider their concerns regarding the student's problem behavior, including unsafe impulsivity, hyperactivity, and pica in the initial evaluation. While the parent provided input and outside reports into the evaluation process, this information was not addressed in the evaluation and therefore was not addressed in the draft IEP. Instead the district documented it and stated they would address these concerns if they surfaced in the school setting. Further, when asked about how long they would take to be addressed if they occurred in the school setting, they were told 4-6 weeks so the district could conduct a functional behavior assessment. The parent stated the outside documentation provided showed the behaviors. Coupled with the potential danger of these behaviors the parents expressed concern with not addressing them in the student's IEP, rather than waiting to see if they emerged. Prior to the January 23, 2023 meeting, the parents provided the PT, OT, and SPL assessments from Playabilities, which document elopement and unsafe behavior in one-to-one therapy appointments. In the meeting on January 23, 2023, the parent requested a safety plan or a Behavioral Intervention Plan (BIP) to assure the child's behavioral needs are addressed during school attendance.

The district responded that "a comprehensive evaluation was completed in all areas for which consent was obtained, including: health, fine motor, gross motor, feeding; social/emotional, adaptive skills, sensory; cognitive; communication." The district stated that the observations at school that were conducted during the evaluation indicated no problems. They stated that the evaluation was comprehensive and resulted in finding the child eligible for special education and related services as a student with developmental disabilities and an appropriate initial IEP was developed for the student. If problems the parent expressed concern for occur during school attendance, the team would address them. The preschool center has the structure of a student improvement

team, frequent team meetings, and a behavior specialist available if needed. The district stated that if the preschool program's regularly provided program interventions did not address the student's behavior, they would initiate a Functional Behavior Assessment (FBA). The estimated time for an FBA is 4 to 6 weeks.

Findings of the Investigation

The findings of Issues One, Two, and Three are incorporated herein by reference.

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #204.

The Evaluation Report Draft, dated January 6, 2023 shows that the undated Playability report was not referenced as reviewed as existing data in any of the areas of evaluation and the April 26, 2022 Cincinnati Children's Neuropsychological Report was referenced as reviewed in the Health/Motor and Nursing/School Health areas, but none of the remaining areas. Further, although evaluation was planned for Nursing/School Health no evaluation was reported, only interview and review of the April 26, 2022 Cincinnati Children's Neuropsychological Report were conducted.

	PWN proposed areas of evaluation and data collection plan		January 6, 2023 Evaluation Report data provided
	Existing Data	Evaluation	
Vision	x		Background information described existing data Evaluation via OT evaluation
Hearing	x		Background information described existing data
Health / Motor	x	x	evaluation, interview, observation, no reference to Playability report review
Social emotional / Behavioral	x	x	evaluation, interview, observation, no reference to Playability or Cincinnati report review

	PWN proposed areas of evaluation and data collection plan		January 6, 2023 Evaluation Report data provided
	Existing Data	Evaluation	
General intelligence	x	x	evaluation, interview, observation, no reference to Playability or Cincinnati report review
Communic ation	x	x	evaluation, interview, observation, no reference to Playability or Cincinnati report review
Adaptive			evaluation, interview, observation, no reference to Playability or Cincinnati report review
Sensory	x	x	evaluation, interview, observation, no reference to Playability or Cincinnati report review
Feeding	x	x	evaluation, interview, observation, no reference to Playability or Cincinnati report review
Nursing / School Health	x	x	interview, observation, no reference to Playability or Cincinnati report review No Evaluation reported

At the January 6, 2023 Evaluation Eligibility meeting the parent reported that the safety concerns regarding the student's pica, hyperactivity, and impulsivity described in the April 14, 2022 Cincinnati Children's Neuropsychological Report and undated Playabilities report were not addressed in the evaluation.

At the January 6, 2023 Evaluation Eligibility meeting the district stated that the evaluation included observations that were representative of the student's current behavior and

that if the behaviors emerged the district would respond according to the district procedures.

The parent reported that she did not think the evaluation was complete as it did not fully consider the imminent safety risk to her child as described in the outside reports with such limited observation.

The parent requested a one-to-one paraprofessional as a compromise to ensure her child's safety.

The parent and district report that the parent did not agree to initial placement and the proposed IEP and did not sign the initial consent to implement the draft January 6, 2023 IEP.

The district provided the PWN dated January 6, 2023 refusing a parent-requested one-to-one paraprofessional on January 13, 2023 via DocuSign. The reason for refusal and other options offered included that "the team does not have the data to support the need for a one-to-one paraprofessional. The proposed IEP addresses the identified medical and social-emotional needs in the least restrictive environment. . . The LEA has determined based on the initial evaluation the proposed services are in the least restrictive environment and have been appropriately calculated to meet his needs at this time."

The district and parent agreed to a meeting on January 23, 2023 to resolve the issues and complete the IEP for the child.

The district and parent as well as the meeting notes from the January 23, 2023 meeting show the parent refused the January 6, 2023 draft IEP and walked out of the meeting.

Applicable Regulations and Conclusions

The initial evaluation must include a variety of assessment tools and strategies to gather relevant including information provided by the parent, that may assist in determining whether the child is an exceptional child, the educational needs of the child, and the content of the child's IEP (K.S.A. 72-3428(b)(1); 34 C.F.R. 300.304(b)(ii)).

It is acknowledged that the district only needs to consider the outside reports and are under no obligation to implement the recommendations made by the outside evaluation team.

Review of the documents and interview found that the district fulfilled its obligation to plan a comprehensive evaluation to determine that the child was eligible to receive special education and related services.

However, the evaluation plan was not fully completed. The evaluation plan in the September 1, 2022 PWN and consented to by the parent on September 8, 2022 proposed record review and evaluation for the Nursing/School Health area. There is no record evaluation was conducted and there is not a section in the January 6, 2023 report describing the findings.

As well, the outside Playabilities and Cincinnati reports provided contradictory information to the evaluation findings presented in the January 6, 2023 evaluation report, but were not contained in the evaluation report.

While not including information from the outside reports did not impact the team's ability to make decisions about eligibility for special education and related services it should have been available in the evaluation report to be considered in developing an appropriate IEP for the student.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district did not conduct a comprehensive evaluation due to the lack of the Nursing/School Health Evaluation and consideration of the outside April 14, 2022 Cincinnati Children's Neuropsychological Report and undated Playabilities reports.

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 areas:

A. Federal regulations at 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) specifies the initial evaluation is to be completed within the 60-school-day timeline.

In this case, the evidence supports the finding that USD #204 did not complete the student's initial evaluation within the 60-school-day timeline due to not providing a Prior Written Notice to the parent in April 2022 when the parent made a written request. Documentation and Interview, document this. It is noted that the parent and district agreed to delay the evaluation to the beginning of the 2022-2023 school year in spite of the noncompliance.

B. Federal regulations at 34 C.F.R. 300.503 and K.S.A. 72-3430(e) specifies that parents must be provided with Procedural Safeguards upon initial referral or parent request for evaluation.

In this case, interview and documents do not show that USD #204 provided the parent's Procedural Safeguards following the parent's April 14, 2022 request for an evaluation nor with the September 1, 2022 PWN to request consent for evaluation.

C. Federal regulations at C.F.R. 300.304(b)(ii)) and K.S.A. 72-3428(b)(1) specify that the initial evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining the educational needs of the child, and the content of the child's IEP.

In this case, interview and documents show that USD #204 failed to include any Nursing/School Health evaluation or findings in the January 6, 2023 evaluation plan. Further, information provided by the parent, specifically the April 26, 2022 Cincinnati and undated Playabilities reports were not addressed in the January 6, 2023 Eligibility Evaluation Report except for referencing the agencies as providing past services.

Based on the foregoing, USD #204 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #204 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at

a. 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f) by responding to a parent's written request for a special education evaluation, completing initial evaluations, and if the child is eligible, to develop and implement an IEP within the required 60-school-day timeline, unless the district has obtained written parental consent to an extension of time.
b. 34 C.F.R. 300.503 and K.S.A. 72-3430(e) by providing the notice of procedural safeguards to parents in response to a parent requesting an initial special education evaluation.
c. C.F.R. 300.304(b)(ii)) and K.S.A. 72-3428(b)(1) by gathering information provided by the parent that may assist in determining the educational needs of the child and the content of the child's IEP.

2. Further, by April 1, 2023 USD #232 will complete the following: (1) submit a written statement of assurance to Special Education and Title Services (SETS) that the district's practices and procedures for initial evaluation and parent communications have been reviewed and revised as appropriate to be responsive and compliant with evaluation procedures , including informing parents of their procedural safeguards as part of the Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act; (2) if the district has a tracking system to comply with the timelines for the special education evaluation process, it will provide a written description of that system to SETS; (3) If the district does not currently have a tracking system to comply with the timelines for the special education evaluation process, then one will be created, and a written description of that system will be sent to SETS.

3. Further, by March 1, 2023 USD#204 shall do all of the following: (a) amend the January 6, 2023 Eligibility Evaluation report to include the missing Nursing/School Health information and determine what of the outside reports provided by the parent, notably the undated Playabilities and April 26, 2022 Cincinnati Children's neuropsychological report, should be included in the Eligibility Evaluation report to ensure the team has complete information about the educational needs of the child to write the present levels of academic achievement and functional performance (related developmental needs) to determine whether any additions or modifications to the special education and related services are needed in the IEP; (b) notify SETS that this action has been completed, and (c) schedule an IEP meeting to consider the missing information specified in paragraph 3(a) to determine whether additional supports of services are needed and should be added to this student's IEP and, within five school-days of that meeting, notify SETS of the results of that meeting.

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.

Gwen P. Beegle, Complaint Investigator

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 #260
ON JANUARY 26, 2023
DATE OF REPORT FEBRUARY 22, 2023

This report is in response to a complaint filed with our office by the complainant on behalf of the student. Records show that the student prefers to be called the student preferred gender pronouns are they/them/their. For the remainder of this report, the student/The student will be referred to as "the student." The complainant will be referred to as "the complainant." The complainant is an Education Coordinator for St. Francis Ministries, the agency charged by the Kansas Department for Children and Families with the management of foster care for the student.

At the start of the 2022-23 school year, prior to being placed in a foster home within USD #260 district boundaries, the student resided in a foster home located within the boundaries of another school district and received special education services from that district under an IEP. That district will hereinafter be referred to as "District A." USD #260 will hereinafter be referred to as "District B."

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the complainant on February 1, 9, and 20, 2023. On February 9, 2023, the investigator spoke via telephone with Ms. Dawn Gresham, Director of Special Services for District B. On February 4, 2023, Gayle Nelson, Education Advocate for the student, gave written permission for the investigator to share information with the complainant. The investigator spoke by telephone with the advocate on February 9, 2023. On February 20, 2023, the investigator spoke by telephone with William Tretbar, counsel for the district.

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

- Behavior Detail Report dated September 20, 2022
- IEP for the student dated September 22, 2022
- Behavior Detail Report dated November 15, 2022

- County Police Department Incident Report dated November 15, 2022
- Notice to Student of Proposed Long Term Suspension or Expulsion Notice (Pending Manifestation Hearing for Disability) dated November 16, 2022
- Email exchange dated November 29, 2022 between the student's foster parent and the director of special services for District B
- Letter from Families Together, Inc. dated November 29, 2022 appointing the foster parent as the Education Advocate for the student
- Written Report of the Findings and Results of an Extended Term Suspension or Expulsion Hearing dated December 2, 2022
- Notice to the Student of the Results of a Suspension or Expulsion Hearing dated December 2, 2022
- Notice to Parents of the Results of a Suspension or Expulsion Hearing dated December 2, 2022
- Manifestation Determination Review dated December 2, 2022
- Email dated December 6, 2022 from the director of alternative learning to the director of special services for District B.
- Email exchange dated December 6, 2022 between the foster parent and District B staff, including the director of special services, the school psychologist, two social workers, and the director of alternative learning
- Email exchange dated December 7, 2022 between the director of special services for District B and the foster parent
- Email exchange dated December 7-8, 2022 between the school psychologist for District B and the school psychology intern for District A
- Email dated January 18, 2023 from the appointed Educational Advocate to the director of special services for District B
- Email dated January 19, 2023 from a Kansas State Department of Education (KSDE) attorney to the complainant
- Email dated January 24, 2023 from the complainant to the director of alternative learning for District B
- Email dated January 24, 2023 from legal counsel for District B to the assistant superintendent for human resources for District B
- Email dated January 25, 2023 from the director for alternative learning for District B to the complainant
- Letter dated February 13, 2023 from an attorney representing District B to the Dispute Resolution Coordinator for KSDE
- School Period Attendance Detail for District A covering the period between September 20 and November 3, 2022

- Grade report for the student for District A for the first semester of the 2022-23 school year

Background Information

This investigation involves a 16 year-old student who was, at the start of the 2022-23 school year, enrolled in the 11th grade in the high school in District A. The student had attended the same high school during the 2020-21 and 2021-22 school years. The student had previously been determined to be eligible for special education services under the category of Other Health Impairments and has been diagnosed with ADHD and Oppositional Defiant Disorder (ODD).

During the 2021-22 school year, the student was enrolled in a combination of general and special education classes. Due to behavioral issues with other students, the student was placed in small classes in the special education environment in order to have greater support. The student continued to skip class and hide in the building, failed courses, and was required to attend summer school to make up core credits.

The student was often absent or tardy and failed all but one first semester class, earning an "A" grade in American Literature/Composition. At the beginning of the 2022-23 school year, the district proposed that a Behavior Intervention Plan be put in place for the student, but, according to a December 2, 2022 Manifestation Determination Review, the student, the student's then foster parents, and their case worker declined to allow the plan to be implemented, although it is unclear whether the foster parents or the case worker had the authority to make educational decisions for the student. The student participated in modified core classes with para support and in only two general education classes for the first semester of the school year.

The student and two sisters had all been placed in foster care and had resided together for several years in the same foster home. In September of 2022, the decision was made to remove the children from what had been an extended seven-year placement, but the student was not moved from the home until October 28, 2022. While the change of placement was pending, the student was given one 10-day out-of-school suspension for possessing a vape cartridge containing THC.

During the month of November 2022, the student rotated through seven foster placements, some within District A and some outside of the district. In order to try to maintain some consistency for the student, the decision was made through the EBID (Education Best Interest Determination) process that the student should continue to

attend school in District A. (A key provision of the EBID process is that children in foster care should remain in their school of origin unless there is a determination that it is not in their best interest to do so.) Because the student was not consistently living within the district boundaries, the student often arrived at school late. The student continued to skip classes once at school.

On November 15, 2022, the student assaulted another student who had reportedly told friends that she was "going to beat [the student at the center of this complaint] up" after a hallway "bumping" incident.

Issue

In her complaint, the complainant identified the following issue:

> By refusing to enroll the student, the district has denied her a Free Appropriate Public Education (FAPE).

Applicable Statutes and Regulations

Kansas statutes - laws passed by the Kansas State legislature - address a broad range of areas from agriculture to elections to roads and bridges. Chapter 72 of the statutes is entitled "Schools." That chapter contains more than 51 articles which address a broad range of requirements related to the education of students in Kansas. Article 34 of Chapter 72 focuses specifically on Special Education and contains provisions explicitly designed to address topics related to the education of exceptional children.

In Article 3, at K.S.A. 72-3122(a), Kansas statutes state that any school-aged child has a right to attend school in the district where he/she lives if: 1) the child lives with a resident of the district who is the child's parent or the person acting as parent or 2) the child lives in the district as a result of placement therein by a district court or by the secretary for children and families (DCF) (emphasis added).

Under Article 61 - "Student Safety and Discipline" - at K.S.A. 72-6120 - Kansas statutes state that a pupil who has been suspended or expelled from school by any district may be refused admission to school in any other school district, regardless of residency, until such time as the period of suspension or expulsion has expired.

However, Article 34 further informs this topic as it relates to exceptional students and special requirements for that cohort of students. At K.S.A. 72-3410(a), the statute states

that each board of education shall assure that all exceptional children residing in the school district who are in need of special education and related services - including foster care children - are identified, located, and evaluated. At 72-3410(a)(2), the statute requires each board to provide a free appropriate public education

- for exceptional children enrolled in the school district and for
- children with disabilities who are placed in a private school or facility by the school district as the means of carrying out the board's obligation to provide a free appropriate public education (FAPE) under this act and for
- *children with disabilities who have been suspended for an extended term or expelled from school*. (Emphasis added.)

The statute does not require that an expelled student be enrolled in the district before the board becomes responsible for providing a FAPE to the student.

While K.S.A. 72-6120 allows a Kansas district to refuse admission to a general education child who has been expelled from another Kansas district, that restriction cannot apply to a child with an IEP because that child continues to have educational rights even during expulsion. Transfer provisions in both state and federal law establish special requirements to ensure the implementation of an exceptional child's IEP. Applying K.S.A. 72-6120 to all students ignores explicit statutory requirements intended to ensure that students with disabilities are provided a FAPE within the district in which they reside.

At K.S.A. 72-3433, the statutes allow for changes in placement for a student with a disability (in this case, expulsion) as a disciplinary consequence for certain behaviors. The statute requires, at K.S.A. 72-3433(b), that a student with a disability whose placement has been changed must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP.

In a letter to the Kansas Department for Children and Families; KVC Behavioral HealthCare, Inc.; Saint Francis Community Services; Kansas Association of School Boards; and Kansas School Administrators dated September 22, 2017, the Director of Early Childhood, Special Education, and Title Services wrote

> *"When a child with a disability violate a school's code of conduct, that behavior could result in suspension or expulsion. Students, including children in foster care, with IEPs for a disability are entitled to the disciplinary protections of special education law."*

The Individuals with Disabilities Education Act (IDEA), at 20 U.S.C. 1414(d)(2)(C) states "In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local education agency shall provide such child with a free appropriate public education including services comparable to those described in the previously held IEP, in consultation with the parent, until such time as the local education agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State Law."

Kansas statutes, at K.S.A. 72-3429(g)(1), state, "If an exceptional child with a current IEP transfers from one Kansas school district to another during the academic year, the new school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the new school district either adopts the transferred IEP, or develops and implements a new IEP for the child."

Again, K.S.A. 72-6120 cannot apply to a child with an IEP because: a) that child continues to have educational rights even during expulsion; and b) the transfer provisions in both federal and state statutes call for the continued provision of FAPE. The rights of the child with a disability in Kansas are determined by special education statutes and prevail in this case.

Complainant's Position

It is the position of the complainant that the student is missing out on educational opportunities to earn high school credits and graduate with their cohort. The complainant asserts that the student should be allowed to enroll in the current district of residence, and appropriate services should then be determined by an IEP team in that district.

District's Position

It is the position of District B that responsibility for the provision of services to the student lies with District A. District B asserts that District A failed to follow the student's IEP as written and made a substantial change to the student's IEP without the consent of the educational decision-maker. District B further contends that District A never revised the student's IEP to outline how the student's special education needs would be addressed in the changed circumstances following expulsion but recommended to

District B that a virtual learning model such as the one used with the student in District A would provide "comparable" services.

Further, District B contends that a virtual learning model could be implemented by District A without any necessity for the student to be enrolled in District B, and that, by implementing such a model, District A would meet its obligation to the student it expelled. This action would, in the opinion of District B, support the goal of Kansas statutes to disallow students from avoiding disciplinary consequences by moving away from the district that had imposed a disciplinary action.

District B believes it is within its rights to decline to admit the student, regardless of where the student resides and cites Kansas statutes as the basis for refusing to admit the student, insisting that District A must provide special education services for the student. It is the position of District B that the mere fact that the student has been moved into a foster placement within its boundaries does not make District B the agency that is obligated to provide the student's special education services.

Investigative Findings

The student's September 22, 2022 IEP states that the student was to receive the following services:

- 98 minutes of special education English one day each week;
- 54 minutes of special education English one day each week;
- 98 minutes of special education History one day each week;
- 54 minutes of special education History one day each week;
- 98 minutes of special education Econ one day each week;
- 54 minutes of special education Econ one day each week;
- 98 minutes of special education Math one day each week;
- 54 minutes of special education Math one day each week;
- 98 minutes of special education Advisory one day each week;
- 98 minutes of special education Learning Center one day each week;
- 54 minutes of special education Learning Center one day each week;
- 98 minutes of para support in general education science three days per week;
- 54 minutes of para support in general education science one day per week; and
- 20 minutes of social work services one day per week.

On October 7, 2022, the student was found in possession of a "dab cartridge" containing THC on school property and was suspended from school for 10 days.

Following a November 15, 2022 assault on another student, the student, the St. Francis Permanency Specialist, and the student's "Educ. Advocate" were notified that the student would be removed from school for one full calendar year. A hearing to discuss this removal was scheduled for December 2, 2022 with a subsequent date for appeal of the hearing decision scheduled for December 16, 2022. The method of delivery used for these notices is unclear from the records produced.

A new Educational Advocate was assigned for the student at the beginning of November 2022.

The student spent Thanksgiving with a new foster family in District B (the district against which this complaint was filed). The new foster parent sent an email to the director of special services in District B on November 29, 2022 notifying the director that the student would be coming to the district, and the two parties discussed possible service options for the student. The foster parent also told the director that Families Together had appointed her as the Educational Advocate for the student.

The director shared with the foster parent that the student would not be allowed to attend the district's special school for students with behavior issues because that program did not accept students who had been expelled. According to the director, the student's services would have to be provided during after-school hours since the student also could not attend a high school in the district. The director also told the foster parent that no decisions could be made until after an EBID meeting had been held to address the student's changed circumstances.

The student was formally placed with the new foster family as of December 1, 2022.

On December 1, 2022, a virtual "Education Best Interest Determination Staffing" (EBID sometimes referred to as BID) was held with the Child Welfare Case Management Provider and District A representatives in attendance. Present were two Education Coordinators (including the complainant) for St. Francis Ministries – the foster care agency charged with oversight of the care of the student. Also present were a family support worker from the foster care agency, and the director of alternative learning from District B. The group considered the student's learning behaviors/disabilities, her IEP, and the distance from her school of origin (District A). The group determined that it was in the student's "best interest to enroll in [District B] and be assigned to the appropriate setting to meet her discipline and sped needs."

The hearing regarding the student's removal from school was held as scheduled on December 2, 2022 in District A. Neither the student nor their new foster parent attended – apparently believing that their attendance was not required since the student no longer resided within District A. A new Educational Advocate was assigned to the student in December 2022. That individual also did not attend the December 2, 2022 hearing. At the hearing, District A made the decision to uphold the student's 186-day expulsion.

Records reflect that notice of the hearing decision was provided to the student. A "Notice to Parents" regarding the student's expulsion was provided to the individual who had been serving as the student's Educational Advocate during the month of November – although that person was no longer the assigned Education Advocate. That same parental notice was also provided to the permanency specialist at the foster care agency.

District A also conducted a Manifestation Determination Review on December 2, 2022. No one attended on behalf of the student. Present were the building principal, the student's special education teacher/case manager, a grade-level counselor, and a school psychology intern. The participants determined that the actions of the student on November 15, 2022 were not a manifestation of the student's disability. According to the report,

> *"disciplinary removal may occur, but the school district must continue to make a free appropriate public education (FAPE) available to the student in a manner which enables the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP..."*

On December 6, 2022, the director of alternative learning for District B sent an email to the director of special services and others stating

> *"The long awaited EEISPF just arrived! I have attached the document. Please note that this student is on an IEP. This student is cleared for enrollment..."*

The director of special education for District B requested that another EBID meeting be held before the student was enrolled since the December 1, 2022 meeting had been conducted prior to the Manifestation Determination meeting.

The foster parent sent an email to the director of special services for District B on December 6, 2022, copying other school staff. The foster parent wrote that the student was "currently on a 12-month expulsion from [District A]." The director responded to the foster parent that same day via email stating

> *"We just found that out this morning as well. She will be eligible for services in our After Hours pogram, M-TH 4-6 pm and the PLC (at DHS)."*

The foster parent wrote back to the director, asking whether the student was eligible for "Tri-City," a special day school program serving students from District B and other neighboring districts. The director responded, stating

> *"No. The purpose of Tri-City is not expulsion, and they would not accept her if she were expelled."*

The foster parent asked whether an "exception" could be filed. The school psychologist for the building responded, stating, "Tri-City cannot be an option at this time due to [the student] currently being under expulsion. I will be reaching out soon to discuss After Hours and getting transportation set up, if needed."

The foster parent then asked the group whether the district partnered with McAdams Academy, a private, grant-supported program located outside the student's district of residence, unaffiliated with the public schools in the district of residence. According to its website, the academy is

> *"...an alternative, community-based, trauma informed school...[whose] students are moderate to high-risk in middle school and high school.. They do not have access to a structured learning environment because they are expelled, suspended, or in the foster care system without permanent placement...[S]tudents earn high school credits, including electives, while working on problem behavior. "*

The school psychologist responded that the district did not have a partnership with the academy, but the foster parent could apply to the academy on her own. The school psychologist noted,

> *"Something to keep in mind though is that [the academy] does not offer special education services."*

The foster parent again pressed for a discussion of a possible exception in light of the student's circumstances. The foster parent also stated, "I am not sure my home can accommodate her only attending school from 4-6 Monday – Thursday, which would likely put her back to bouncing…If all else fails, since she has an IEP – does [the district] have the ability to transport to [the private school]?"

The director wrote back, stating

> *"…the laws are straightforward with this. The behavior follows the student…The school found that the behavior was not a manifestation of her disability, so there is no recourse. Her protections are no longer intact from that incident. We have to serve her but under the terms of the expulsion….We do not offer transportation outside the boundaries of [the student's district of residence]."*

The director of alternative learning for the district then responded as follows:

> *"I am attaching a snapshot of the KS State Statute that dictates the limits of providing education for students that have been suspended or expelled from schools. It is a hardship for any student to access their education under these circumstances. I wanted you to be aware of this law as it impacts all public schools in the state of Kansas. With this student receiving IDEA services, you will work through Special Services to determine what [the student's] services will be through [the district]. I still have not received an EEISPF for [the student], but have approved enrolling into [the district]…"*

On December 7, 2022, the foster parent sent an email to the director stating

> *"I spoke to Tri-City and a couple schools. [The district] has the option to send her to Tri-City. If [the district] recommends/refers her to Tri-City, they will not deny her due to expulsion. I've already confirmed this with them. Maybe I am asking for special education, but more than that, I am asking for her to have the opportunity to try an Alternative School – something that has never been offered to her…I have reached out to [the previous district] and requested an appeal, which will likely be denied and not even amended…"*

The director responded, stating

> *"I've passed this up the chain of command. It might take a little time for them to get back to me."*

Shortly thereafter, the director sent an email to the foster parent stating

> *"I talked with our assistant superintendent. We don't even have to accept her since she has been expelled. But we know you are a great foster placement and do great things for our kiddos. We cannot offer more than after-hours at this time."*

Also on December 7, 2022, the director of alternative learning for the district sent an email to the complainant writing

> *"...there continues to be questions regarding the services available for [the student]. Upon review of the EEISPF document...it was noted that the BID and EEISPF took place prior to the Manifestation Hearing and Long Term Expulsion Hearing. We need to go back and review the needs of the student in light of the findings, and update the EEISPF after the hearing date. In light of the long term expulsion for one calendar year, the summary stated that the school district must continue to make a free appropriate public education (FAPE) available to the student in a manner in which enable the student to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the student's IEP. It was also determined that this incident was not a manifestation of the disability. Based upon concerns expressed by the foster parent, she feels that [District B] is not able to meet the needs of the student, and that responsibility remains with the former school district. The student and no one from S. Francis was present at the hearing to participate in the process, which was also a concern of the current foster placement.*
>
> *What was [District A's] solution for meeting [the student's] educational needs in their district? At this point, this student has moved out of their district, and is living within the [District B] boundary in a new foster home. We need to meet and examine the information, determine the best interest of this student in light of this current situation. Please let me know how I can assist with this request."*

On December 7, 2022, the director of special services for District B sent an email to the director of alternative learning stating

> *"The BID is dated a day before the expulsion. Would you please ask for an updated BID now that we have the expulsion paperwork?"*

On December 7, 2022, the school psychologist in District B sent an email to the school psychology intern in District A asking for information regarding what services District A

was planning to offer the student during her expulsion so that District B could determine what comparable services to offer. The school psychologist also asked

> *"Do you have that updated paperwork or any info for me?"*

The school psychology intern from District A responded via email on December 8, 2022, writing

> *"I just spoke with [the student's] case manager. [The student] was having virtual check-ins for 30 minutes, 3 days a week. The communication dropped somewhere about getting an official amendment form and things of that nature, so I do apologize for that. But in light of comparable service, having a special education teacher schedule some quick Zoom/phone meeting times for 30 minutes, 3 days a week would definitely be comparable to what our district was doing. Again, my apologies for not having that official amendment form..."*

In an email to the director of alternative learning on December 8, 2022, the director states

> *"If [District A] recommends 30 minutes 3 times per week, that is what we would accept with the move-in of the IEP."*

On December 8, 2022, the director of special education sent an email to the director of alternative learning stating

> *"[The foster parent] WAS notified of the after-hours placement and denied it. We even spoke about it on the phone after she called Tri-City. I explained to her that Tri-City was not an option. As did [the principal there]. As will [others] if contacted."*

The appeal of the expulsion decision was heard virtually by District A on December 16, 2022. The expulsion decision by District A was upheld.

The second BID was held virtually on December 16, 2022. Participants included the superintendent of District A, the principal of the school in District A from which the student had been suspended, the hearing officer from District A, a representative of the foster placement agency, an education coordinator for that same agency, a guardian ad litem, and the new foster parent. The group considered the student's learning behaviors and disabilities, the student's IEP services, and the distance from the school of origin and determined that it was in the student's best interest to "enroll in [District B] and her IEP

team including Education Advocate work together on an assignment to best meet her needs."

The EBID was updated on January 12, 2023. No changes were made to the summary which stated that

> *"...is entitled to receive FAPE through her local district [District B]. It is in [the student's] best interest to enroll in [District B] and her IEP team including Education Advocate work together on an assignment to best meet her needs."*

By January 18, 2023, the foster mother with whom the student had been residing had made a request to end her assignment as Education Advocate for the student. On January 19, 2023, in response to a question posed by the complainant, a KSDE attorney sent an email to the complainant and the program director for Families Together with an opinion regarding a situation where a student in foster care in one district is expelled and then moves to another district.

On January 24, 2023, the complainant sent an email to the director of alternative learning for District B stating

> *"[The student] has been residing in your district since December. [The student] is a Special Education student and has not been receiving any services for almost two months now. We cannot proceed further in rectifying this and setting up a plan to provide her with a Free Appropriate Public Education until she is allowed to enroll in her local district of residence. The BID has been completed multiple times, follow up information from [the foster care agency] or [District A] has been provided to you, and KSDE attorney...provided statutory guidance on 1/19/2023 supporting her enrollment in [District B]."*

The complainant attached the email from the KSDE attorney to her email to the director of alternative learning who shared the opinion with the counsel for District B.

District B's counsel disagreed with the KSDE attorney's position, and on January 24, 2023 sent an email to the assistant superintendent of human resources for District B advising her that

> *"...District B can refuse admission to the expelled student pursuant to statutory mandate and owes no further legal obligation to the student pursuant to either statute or regulation. District A, which imposed the expulsion upon a child, must*

continue to provide education services and an IEP to the expelled student as required by the clear and unambiguous language of the relevant statutes and regulations."

The director of alternative learning for District B sent an email to the complainant on January 25, 2023 stating

"...legal counsel has rendered a decision regarding the enrollment status of [the student]. I have copied that response below. Please let me know if you have any additional questions."

On January 25, 2023, the complainant sent an email to the attorney for KSDE, writing

"The attorney for [District B] disagrees with your guidance. Is there anything KSDE can do to mediate between St. Francis, [District A], and [District B] to make sure this child receives FAPE?"

The attorney for KSDE responded by email on January 25, 2023, stating

"After talking with General Counsel [for KSDE], the Department is advising you that we have provided guidance on this issue. [District B] is not required to adopt this guidance, if it disagrees. If this issue cannot be resolved, a complaint may be made to Special Education and Title Services, or the parent of this child may request a special education due process hearing."

As of the date of this report, the student has still not been enrolled in District B. The foster care agency has unilaterally secured a placement for the student in a private school setting, but no special education services are being provided by District B.

Summary and Conclusions

The student in this case was expelled from school in District A following an assault on another student. While the hearing for the expulsion was pending, the student was moved by the foster care system to a placement in District B. At the time of the relocation, the student was being provided with special education services under an IEP by District A.

The foster parent - who had also been appointed as education advocate for the student - contacted the director of special education for District B to let her know that the student would be moving into her home. The student officially became a resident of District B on December 1, 2022.

District B began the process of collecting information about the student and determining how to meet the student's special education needs. The director of special education from District B and the foster parent exchanged emails regarding service options. The student had not yet been enrolled in District B when, on January 24, 2023, legal counsel for District B rendered a decision that the district was not required to enroll the student since the student had been expelled by District A. The foster parent was notified of that decision on January 25, 2023. As of the date of this report, the student has still not been enrolled in District B. The foster care agency has unilaterally secured a placement for the student in a private school setting, but no special education services are being provided by District B.

It is clear from the record that the services being provided to the student by District A following the student's expulsion were not the services required to be delivered under the IEP crafted by District A. However, that does not excuse District B from the responsibility to address the needs of this exceptional child after the student moved into District B's boundaries. While the law does not require District B to allow the student to attend classes in a public high school as she did in District A prior to her expulsion, District B is obligated - by virtue of the student's residence and statutory requirements regarding the provision of a FAPE to a student with a disability - to provide the student with special education services. Students with a disability who move from one Kansas school district to another Kansas district with an active IEP must continue to be provided special education services regardless of disciplinary status. Had the student remained in District A during the period of her expulsion, District A would have been responsible for providing services, but that obligation stopped when the student was moved more than two hours away to District B. District B cannot avoid its responsibility for providing a FAPE to this student simply by refusing the student enrollment.

Because District B has, since December 1, 2022, failed to provide special education services to a student who resides within district boundaries and who transferred to the district with an active IEP, a violation of special education statutes and regulations is substantiated.

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, violations occurred with regard to

- K.S.A. 72-3122(a), which requires the district to serve any student who resides within the district;
- K.S.A. 72-3410(a)(2), which requires the district to provide a FAPE to students with a disability who have been expelled; and
- K.S.A. 72-3429(g)(1), which requires the district to provide services to students with a disability who transfer into the district from another Kansas district with an active IEP.

Therefore, USD #260 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 10 calendar days of the date of this report, a written statement of assurance stating that it will comply with
   a) K.S.A. 72-3122(a) by enrolling this student immediately;
   b) K.S.A. 72-3410(a)(2) by providing this student with FAPE throughout the period of her expulsion (so long as the student continues to reside within USD #260 boundaries); and
   c) K.S.A. 72-3429(g)(1) by providing this student with special education services.
2) Within 5 calendar days of the date of this report, schedule an IEP team meeting to determine how this student's ongoing special education needs should be met.
   a) The meeting shall be held within 10 calendar days of the date of this report.
   b) The student, complainant, and current education advocate must be invited and should be present at the meeting.
   c) In determining how best to provide services to this student, the team shall not limit discussion to any single placement option.
   d) If changes are made regarding the special education services to be provided to the student, USD #260 shall provide to SETS a copy of the new IEP and all related prior written notice documents regarding proposed changes in services and placement.
3) Within 10 school days of the date of this report, submit to SETS for approval a plan for the provision of the following compensatory services:
   - 180 hours of agreed-upon compensatory services (20 hours for each of 9 weeks that school was in session between December 1, 2022 and the date of this report) and
   - 180 minutes of compensatory social work services (20 minutes for each of 9 weeks).
   a) Additional agreed-upon compensatory services are awarded for any failure to provide services after the date of this report. These additional compensatory services shall be provided at the rate of 20 hours for every

week or partial week that school is in session unless or until services to the student are changed through the IEP team process.

b) Additional compensatory social work services shall also be provided at the rate of 20 minutes for each week or partial week that these services are not delivered unless or until the student's services are changed through the IEP team process.

c) The provision of these compensatory services should be discussed at the IEP team meeting described above under Corrective Action 2.

d) The student, complainant, and education advocate should be encouraged to take an active role in the discussion regarding appropriate compensatory services in order to develop a plan that addresses the student's unique circumstances. The team should be willing to consider all meaningful options, which could include such options as GED prep, vocational training, or individual tutoring.

4) Within 3 school days of receipt of approval for the plan described under Corrective Action 3, the district shall present the approved written plan to the education advocate.

a) The education advocate shall have the option of accepting all or part of the proposed plan and shall notify the district in writing of her decision within 5 calendar days of receipt of the finalized plan.

b) The district shall notify SETS of the education advocate's decision regarding compensatory services no later than 5 calendar days after receipt of the written response.

5) By no later than the 5th of each remaining month in the 2022-23 school year, including the ESY period if compensatory services are being provided during that period, USD #260 shall submit to SETS a summative report regarding the provision of compensatory special education services to the student during the preceding month. Reporting should continue until all agreed upon compensatory services have been delivered unless or until the student transfers out of the district.

6) Further, USD #260 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 #373
ON JANUARY 23, 2023
DATE OF REPORT FEBRUARY 22, 2023

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

Investigation of Complaint

Diana Durkin, Complaint Investigator, spoke by telephone with the parent on January 25 and 27, 2023. On January 26, 2023, the investigator spoke via telephone with Ms. Reagan Seidl, Director of Special Education for the Harvey County Special Education Cooperative.

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

- Notice of Meeting dated October 21, 2021
- IEP for the student dated November 9, 2021
- Prior Written Notice Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated October 22, 2021
- Email dated October 18, 2022 from the parent to the physical therapist
- Email exchange dated October 18 and 19, 2022 between the parent and physical therapist
- Email exchange dated October 19, 2022 between the parent and the physical therapist
- Notice of Meeting dated October 19, 2022
- IEP for the student dated November 2, 2022
- Prior Written Notice Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and Request for Consent dated November 2, 2022
- Email dated November 3, 2022 from the parent to the director of special education, the building principal, and the student's case manager

- Email exchange dated December 8, 2022 between the parent and the student's special education teacher
- Email dated January 18, 2023 from the parent to the special education teacher and physical therapist
- Email exchange dated January 19, 2023 between the parent and the physical therapist
- Physical Therapy notes reflecting services from the start of the 2022-23 school year until November 10, 2022
- Occupational Therapy notes covering the period of October 20, 2022 through January 9, 2023
- Log of stretching activities covering the period of January 18 to February 20, 2023
- IEP Progress Reports for the student for the first and second quarters of the 2022-23 school year

Background Information

This investigation involves a 14 year-old boy who is enrolled in the seventh grade at his neighborhood middle school. The student has been determined to be eligible for special education under the categories of Other Health Impairment and Intellectual Disability. He has been diagnosed as having Cerebral Palsy which has impacted right side function. He wears an orthotic device on his right leg and requires specially designed adaptive physical education.

The student has also been diagnosed with ADHD and impaired vision.

The student receives special education services through an IDD (Intellectually and Developmentally Delayed) classroom, and is supported by a paraeducator when participating in general education classes. Additionally, the student receives direct physical therapy and speech/language support as well as consultative occupational therapy services.

Issue

In her complaint, the parent identified the following issue:

The student is not receiving the special education services required by his 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 district is 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); K.A.R. 91-40-8(h), (i); K.A.R. 91-40-16(b)(1)–(3); K.A.R. 91-40-16(c); 34 C.F.R. 300.323(a), (c)). The IEP for a student with an exceptionality must include, among other elements, a statement of the special education and related services to be provided to the student and must indicate the projected date for the beginning of these services as well as their anticipated frequency, location, and duration (K.S.A. 72-3429(c)(7)). The amount of services to be provided must be stated in the IEP so that the level of the district's commitment to each of the various services to be provided is stated in a manner that is clear to all who are involved in both the development and implementation of the IEP (Federal Register, August 14, 2006, p. 46667).

The Office of Special Education Programs (OSEP) is a division within the U.S. Department of Education. OSEP provides leadership and support for professionals working with children with disabilities. OSEP administers the Individuals with Disabilities Education Act (IDEA) and frequently provides guidance in the form of an "OSEP Letter" in response to specific questions raised by parents, educators, advocacy organizations, state educational agencies, and other interested parties.

In a March 8, 2007 "Letter to Clarke," the director of OSEP opined on what to do when a related service was missed due to the absence of the service provider. As stated in the letter,

> *"IDEA and the regulations do not address these issues. States and local education agencies (LEAs) are required to ensure that all children with disabilities have available to them FAPE [a free appropriate public education] consistent with the child's individualized education program (IEP) (see CFR 300.101). We encourage public agencies to consider the impact of a provider's absence…on the child's progress and performance and determine how to ensure the continued provision of a FAPE in order*

for the child to continue to progress and meet the annual goals in his or her IEP. Whether the interruption of services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis."

Parent's Position Regarding Physical Therapy Services

The parent asserts that the district failed to provide the student with several direct physical therapy sessions during the first semester of the 2022-23 school year.

District's Position

The district acknowledges that the student was not provided with physical therapy services on a bi-weekly basis at the beginning of the school year but asserts that all missed sessions have been made up.

Investigative Findings Regarding Physical Therapy Services

As stated in the "Special Education Services" section of the student's November 9, 2021 IEP, the student was to receive 15 minutes of physical therapy in a special education setting once "every other week" for the "2021-22 IEP year." The "Related Services" section of the student's November 9, 2021 IEP also states that the student was to receive 15 minutes of physical therapy in a special education setting "every other week."

The 2022-23 school year for the district began on August 17, 2022. The "Teacher Information Page" associated with the student's November 2021 IEP shows that physical therapy services for the student would begin as of August 17, 2022 and would be provided "every 2nd week." However, during parent/teacher conferences on October 17, 2022, the parent was told by the special education teacher that the student had not been receiving physical therapy services. On October 18, 2022, the parent sent an email to the physical therapist stating,

"Please let me know what your records indicate regarding sessions with [the student]. Please include: date, time and location where services were rendered."

On October 19, 2022, the physical therapist sent an email to the parent stating,

"It is accurate that I have not seen [the student] for 4 visits that I had scheduled. I am sorry. I have been gone with sick kids at least 3 Thursdays so far this year and 3 other Thursdays I had meetings at his scheduled time, which is Thursday at 1:00 to 1:15. I

have the times worked into this month making up the missed times, so he will be getting his services."

The parent responded to the physical therapist by email on October 19, 2022, writing

"I would like a record of when he is receiving the compensatory services please in addition to his regular services. Is it accurate that he is to have a session with you once a week and the second session is to be done by paras or aides under your directions for stretches and exercises? Have you given those directions and trained the staff working with [the student] this year on stretches and exercises? I am concerned as his teacher did not even know he receives PT [physical therapy] services, so I would assume no one has done anything with [the student] for the first quarter of the school year. I am also concerned that I was not notified that he was missing these sessions for the first 10 weeks of school. I would implore you to not schedule meetings on [the student's] time or to not attend every one. I am not sure why my child has to take the back burner. Specifically 3 times in a row."

An annual IEP meeting for the student was held on November 2, 2022. At the meeting, the physical therapist told the parent that she wanted to dismiss the student from physical therapy. The parent disagreed with the therapist's proposal and asked to see the data and documentation the therapist used to support her decision to recommend dismissal. The physical therapist told the parent that she would provide the data she requested by November 11, 2022. The IEP team determined discussion of the student's IEP would continue at another team meeting. That meeting was scheduled for December 9, 2022. The student's November 9, 2021 IEP remained in effect.

On November 4, 2022, the physical therapist provided the parent with a summative record of services she had delivered to the student between the start of the school year on August 17 and November 10, 2022. According to that summary, the student received services for the first time on October 20, 2022 – 9 weeks into the 2022-23 school year. The record indicates that the physical therapist did not schedule any sessions with the student during the month of August and had missed five scheduled sessions with the student in September and October – September 8, 22, and 29 as well as October 6 and 13, 2022. The therapist was absent on two of those dates, was attending another student's IEP meeting on two occasions, and was attending another meeting at the time of a fifth scheduled session.

According to the service summary, the physical therapist held a one-hour session with the student on October 20, 2022. The physical therapist was available to provide a

therapy session on October 27, 2022, but the student was absent on that date. On November 3, 2022, the therapist worked with the student for 61 minutes. On November 10, 2022, the therapist worked with the student for 75 minutes. An additional 55 minutes of service was provided to the student by the physical therapist on November 17, 2022. No direct PT services were provided to the student between November 17 and December 10, 2022.

On December 9, 2022, the district provided the parent with prior written notice of proposed changes to the student's IEP. Among other changes, the district proposed a reduction in physical therapy services from 15 minutes of direct service every other week to 10 minutes of consultative support every fourth week. The parent gave her signed written consent for this change on December 9, 2022.

Summary and Conclusions Regarding Physical Therapy Services

While the student's November 9, 2021 IEP stated that the student was to receive 15 minutes of direct physical therapy (PT) services every second week, no PT services were provided to the student until October 20, 2022 – nine weeks into the school year. The therapist had until that time been unavailable to provide services at the time of each scheduled session either because she was absent or because she was participating in a meeting.

Between October 20 and November 17, 2022, the physical therapist met with the student four times (October 20 and November 3, 10, and 17, 2022) and provided a total of 251 minutes of PT services. No direct PT services were provided to the student after November 17, 2022.

The student's IEP team held two meetings to complete the annual IEP review – November 2 and December 9, 2022. On December 10, 2022, the parent gave her written consent for a change in physical therapy services proposed by the district. Physical therapy services were reduced from 15 minutes of direct service every second week to ten minutes of consultative services every four weeks.

Had 15 minutes of PT services been provided to the student every second week during the period between the start of the school year and December 10, 2022 for a total of eight weeks, the student would have received 120 minutes of PT support. In actuality, the student received more than 250 minutes of services over four sessions, but these sessions were not conducted "every second week" as specified in the student's November 9, 2021 IEP.

Because PT services were not delivered in the manner required by the student's November 9, 2021 IEP, a violation of special education statutes and regulations is substantiated. However, no compensatory physical therapy services will be awarded because no physical therapy services were lost as a result of this violation.

Parent's Position Regarding Occupational Therapy Services

The parent asserts that the district failed to provide the student any occupational therapy services during the first quarter of the 2022-23 school year. The parent contends that she has not seen any evidence that consultative occupational therapy services have been provided.

District's Position Regarding Occupational Therapy Services

The district acknowledges that the student was not provided with monthly occupational therapy consultative services but asserts that all missed sessions have been made up.

Investigative Finding Regarding Occupational Therapy Services

According to his November 9, 2021 IEP, the student was to be provided with 15 minutes of consultative support from an occupational therapist each month.

On October 18, 2022, the parent sent an email to an occupational therapist who had previously served the student. The parent told the therapist that the student's special education teacher had – at parent/teacher conferences – "mentioned …that [the student] has not received any OT [occupational therapy] consult or OT services, even though his IEP states he has OT consult."

The occupational therapist responded on October 18, 2022, stating,

> *"…an OT will make an extra contact this month to make up for the missed September consultation with his teacher. We apologize that this occurred but will definitely rectify the situation this week. "*

According to the occupational therapy service notes provided by the district, the occupational therapist visited the student's classroom on October 20, 2022 and spoke with the special education teacher regarding the role of the occupational therapist. The therapist and teacher discussed the student's skills and strategies to assist the student with regard to opening, manipulating, and accessing classroom materials. The therapist spent a total of 30 minutes in the classroom.

On October 21, 2022, the occupational therapist observed the student for 45 minutes during his art class and interacted with the paraeducators in that classroom. Additionally, the therapist engaged with the student regarding range of motion activities.

During a fifteen-minute period on November 4, 2022, the COTA (certified occupational therapist assistant) and special education teacher exchanged emails regarding the student's typing program and a set of silverware that had been ordered for the student. The COTA spoke again with the special education teacher on November 8, 2022 and delivered the silverware to the school on November 9, 2022.

On December 9, 2022, the district provided the parent with prior written notice of a proposed change to the student's occupational therapy services. The district proposed a reduction in the frequency of occupational therapy consultative support from 15 minutes every fourth week to 15 minutes every ninth week. The parent gave her signed written consent for these changes on December 9, 2022.

On December 20, 2022, the COTA observed the student for 20 minutes in the special education classroom setting. During the month of January 2023, the COTA and the special education teacher spent 15 minutes exchanging emails regarding the student.

Summary and Conclusions Regarding Occupational Therapy Services

The November 9, 2021 IEP for the student required the district to provide 15 minutes of consultative occupational therapy services each month or a total of 75 minutes of service over the months of August through December. Occupational therapy service notes show that no consultative services were provided during the months of August and September of 2022. Consultative services were initiated on October 20, 2022, and a total of 75 minutes of consultation were provided by the end of October. Twenty-five minutes of service were delivered in November 2022, and twenty minutes of consultation was provided in December 2022. Fifteen minutes of consultation were provided in January of 2023 prior to the date this complaint was filed on January 23, 2023.

Because occupational therapy services were not delivered in the manner required by the student's November 9, 2021 IEP, a violation of special education statutes and regulations is substantiated. However, no compensatory occupational therapy services will be awarded since all required minutes of consultative support had been provided by the time this complaint was filed.

Parent's Position Regarding the Provision of Accommodations

The parent contends that the district failed to provide the student with a typing program accommodation as specified in his IEP.

District's Position

The district acknowledges that this accommodation was not implemented during the first quarter of the school year, but reports that the student now has access to the program and uses it regularly.

Investigative Findings Regarding the Provision of Accommodations

The "Accommodations and Modifications" section of the student's November 9, 2021 IEP states that the student is to have available a "1 hand typing program" any time he is working on typing.

According to the parent, the "one handed typing program had been discussed at the IEP team annual review meetings of November 3 and December 7, 2022. By report of the parent, the teacher had indicated that she was unfamiliar with the program, which indicated to the parent that the program had not been made available to the student during the first semester of the 2022-23 school year.

The student was not enrolled in a typing class and was not routinely typing for any other reason in the classroom.

On November 3, 2022, following the first of two annual IEP review meetings, the special education teacher contacted the COTA and began work with the district's technology center staff to unlock the programs the student needed for a left-handed typing program.

On November 3, 2022, the parent sent an email to the director of special education and the middle school principal outlining her concerns and requesting a meeting to discuss those concerns.

Occupational therapy service notes provided by the district show that the COTA and the special education teacher discussed the typing program via email on November 4, 2022.

On December 8, 2022, the parent sent an email to the student's special education teacher outlining "adjustments [she] would like to make" to the district's proposed IEP including

- a requested redaction of a statement regarding the student's ability to "access ditches around the school in case of an emergency";
- the inclusion of an accommodation regarding "the one handed typing program"; and
- changes to a statement regarding the student's need for extended school year services.

Occupational therapy service notes provided by the district show that staff had not been "able to get his one handed typing program to work," and a work order had been submitted to "IT." Notes for January 9, 2023 reflect that "we figured out what was going on, today, and it does work!"

By report of the special education teacher, this process "took a while…to get the kinks worked out and to figure out how to save [the student's] information. Technically, he's been using it since November, unfortunately, we only recently figured out what was needed to save his information." The student was able to use the program while technical problems were being ironed out, but he was not typing with the program on a daily basis. As of February 6, 2023, the student is using the program and practicing typing for 10 minutes each day.

Summary and Conclusions Regarding the Provision of Accommodations

While the student is now - on a daily basis - using the "one handed typing program" specified in his November 9, 2021 and November 2, 2022 IEPs, it was not available for his use until November and not completely functional until January 9, 2023. Because the district failed to provide the student with this required accommodation, a violation of special education statutes and regulations is substantiated.

Parent's Position Regarding Implementation of an Annual Goal

The parent asserts that the district failed for several weeks in December 2022 and January 2023 to implement activities related to a goal which was added to the student's IEP at a December 7, 2022 IEP team meeting.

District's Position Regarding Implementation of an Annual Goal

The district acknowledges that the student's in-class stretching program was not initiated in a timely manner and that opportunities for stretching were missed. The district has begun providing additional stretching opportunities for the student during the school day to address this delay.

Investigative Findings Regarding Implementation of an Annual Goal

The student and his classmates in his physical education class completed stretches 3 days per week as a part of the class activities. However, when the student's IEP was reviewed and revised during meetings on November 3 and December 7, 2022, the parent requested that greater emphasis be given to stretching activities. The following goal was added to his IEP:

> *"in 36 instructional weeks, during class time, [the student] will be able to perform his daily stretches for 10 minutes with supervision to increase his range of motion and independence in his daily routine on 5 out of 5 trials."*

According to the parent, this goal was to be implemented and monitored by the special education teacher who would be setting aside 10 minutes each day to supervise the student while he completed a program of stretches designed by the physical therapist.

On January 18, 2023, the parent sent an email to the special education teacher, the physical therapist and others stating

> *"[The student] reports to me at home that he is not doing any stretches in class…Where are we on getting these implemented and documented?"*

On January 18, 2023, the special education teacher sent an email to the parent stating

> *"I owe you a HUGE apology!! I completely forgot! We did start them today and I asked my paras if they were stretching in PE, which they are. Would you like for me to start documenting the stretches and sending it home on a daily basis? This way you have the assurance it is getting done? Again, I am so sorry for my oversight with this!"*

On January 19, 2023, the parent sent an email to the physical therapist asking for the list of seven stretches designed by the therapist to be implemented in the classroom. Later that day, the physical therapist sent the parent "[The student's] Stretches" – seven stretches to be held for 30 seconds on each side.

The special education teacher began documenting the student's stretching activities on January 18, 2023 using a Google document that allowed her to communicate about these activities with the parent and the physical therapist. Beginning on January 18, 2023, the classroom teacher began maintaining a log of the student's stretching activities. Between January 18 and January 27, 2023, the student spent at least 10 minutes stretching each day. On the majority of these days, the student completed the majority of his targeted 7 stretches as well as other stretches. On January 30, 2023, the stretching opportunities for the student were increased to twice a day. Since February 2, 2023, the student has stretched twice a day for 10 minutes, focusing on the 7 stretches designed specifically for him. In total, 11 of the 15 days of missed stretching opportunities had been made up by February 20, 2023.

Summary and Conclusions Regarding Implementation of an Annual Goal

A new 10-minute stretching goal was added to the student's IEP at the time of the annual IEP review. Seven stretches were designated by the physical therapist as appropriate for the student's needs. The special education teacher agreed to be responsible for the implementation and monitoring of this goal. The teacher told the IEP team that she would develop a class-wide stretching program for her class, and this goal would be addressed through that program. However, the teacher "forgot" to initiate the program until she was reminded by the parent. By that time, 15 school days had passed during which the student had no opportunity for stretching in the special education classroom.

By providing two 10-minute stretching opportunities for the student each day between February 2 and February 20, 2023, the special education teacher has fully made up 11 of the 15 stretching opportunities the student had missed.

Because the district failed for 15 days to implement one of the annual goals included in the student's IEP, a violation of special education statutes and regulations is substantiated.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes 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 #373 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 10 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 by
    a) providing special education and related services on the schedule specified in this student's IEP;
    b) implementing all accommodations/modifications specified in this student's IEP; and
    c) implementing all annual goals in this student's IEP.
2) Within 20 calendar days of the date of this report, submit to SETS a statement of assurance that 4 additional stretching sessions for the student have been completed for a total of 15 sessions.
3) Within 30 calendar days of the date of this report, submit to SETS for review guidelines for staff regarding the delivery of services missed due to teacher absence or unavailability.
4) Within 30 calendar days of the date of this report, submit to SETS verification that training has been provided to the case manager for this student regarding the responsibility of case managers to ensure that services in the IEPs of her assigned students are being implemented.
5) Further, USD #373 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 #230
ON JANUARY 24, 2023

DATE OF REPORT FEBRUARY 23, 2023

This report is in response to a complaint filed with our office on behalf of the student by his mother, The parent. In the remainder of the report, the student will be referred to as "the student". The parent will be referred to as "the mother", "the parent", or "the complainant".

The complaint is against USD #230, Spring Hill Public Schools. In the remainder of the report, "USD #230," "the "school," the "district", and 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 initially received the complaint on January 24, 2023 and the 30-day timeline for the investigation ends on February 23, 2023.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the parents by telephone on January 26, 2023 to clarify the issues of the complaint. The Complaint Investigator interviewed the parents by telephone on February 9, 2023.

USD #230 made the following administrative staff available for telephone interviews on February 13, 2023:

- Dianna McKenzie, Special Services Coordinator
- Amanda Martell, Behavior Interventionist

In completing this investigation, the Complaint Investigator reviewed the following resources and documentation provided by the complainants and the district:

- Entry/Withdrawal Record for the 2021-22 and 2022-23 school years
- SpedTrack Parent Communication Notes dated between August 8, 2021 and November 11, 2022
- Team Meeting Notes written by school staff dated March 28, 2022
- Individualized Education Program (IEP) with Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) dated March 28, 2022 with amendments on or about August 22, 2022; September 23, 2022; October 31, 2022; and November 11, 2022
- Prior Written Notice (PWN) dated March 28, 2022 with written consent from the parent on March 28, 2022
- IEP Goal Progress Reports for the IEP dated March 28, 2022
- Attendance Record dated between April 19, 2022 and November 9, 2022

- PWN dated August 25, 2022 with written consent from the parent on August 26, 2022
- Email dated August 30, 2022 at 8:43 p.m. written by Kathleen Krull, Special Education Teacher, to the parent
- Email dated August 30, 2022 at 9:57 p.m. written by the parent to Ms. Krull
- Email dated August 31, 2022 at 6:25 p.m. written by Ms. Krull to the parent
- Email dated September 19, 2022 at 3:38 p.m. written by Ms. Krull to the parent
- Email dated September 19, 2022 at 3:45 p.m. written by the parent to Ms. Krull
- Email dated September 23, 2022 at 12:47 p.m. written by Ms. Krull to the parent
- Email dated September 23, 2022 at 1:03 p.m. written by the parent to Ms. Krull
- Email dated September 23, 2022 at 2:37 p.m. written by Ms. Krull to the parent
- Email dated September 23, 2022 at 3:05 p.m. written by the parent to Ms. Krull
- PWN dated September 23, 2022 with written consent from the parent on September 23, 2022
- Notes dated September 28, 2022 from phone call with the classroom teacher at Holy Spirit School
- Notes dated September 29, 2022 from phone call with the parent
- Email dated October 20, 2022 at 2:48 p.m. written by the parent to Judy Cole, Principal of Prairie Creek Elementary School
- Email dated October 20, 2022 at 4:35 p.m. written by Ms. Cole to the parent
- Team Meeting Notes written by school staff dated October 27, 2022
- KSDE ESI Documentation Form dated October 31, 2022
- PWN dated November 1, 2022 with written consent from the parent on November 2, 2022
- Team Meeting Notes written by school staff dated November 1, 2022
- ESI documentation dated November 4, 2022
- KSDE ESI Documentation Form dated November 4, 2022
- KSDE ESI Documentation Form dated November 8, 2022
- PWN dated November 10, 2022 with written consent from the parent on November 16, 2022
- Discipline Record dated between November 10, 2022 and January 9, 2023
- Team Meeting Notes written by school staff dated November 10, 2022
- KSDE ESI Documentation Form dated November 11, 2022
- Email dated November 11, 2022 at 11:11 a.m. written by Ms. Krull to the parent
- Team Meeting Notes written by school staff dated November 28, 2022
- Email dated December 2, 2022 at 3:43 p.m. written by Dianna McKenzie, Special Services Coordinator, to Darcy Sly, Principal at Dayton Creek Elementary School, and Cindy Dziadosz, Director of Special Education
- Team Meeting Notes written by school staff dated December 9, 2022
- IEP Amendment between Annual IEP Meetings dated December 13, 2023 and signed by the parent on December 15, 2023
- PWN dated December 13, 2023 and signed by the parent on December 15, 2023
- Response to the Allegations written Ms. Dziadosz dated February 3, 2023

- Email between Erin Bennett, Dean of Behavioral Services, and the parents dated between August 3, 2022 and August 8, 2022
- Email from Ms. McKenzie to the Complaint Investigator dated February 13, 2022 at 10:32 a.m.
- Findings of Fact Regarding Investigation into Formal Complaint regarding ESI adopted by the USD #230 Board of Education on February 13, 2022
- USD #230 School Calendar for the 2022-23 School Year
- Holy Spirit School Calendar for the 2022-23 School Year

Note that documentation related to issues not pertaining to the allegations including the reevaluation of the student in January 2023 were also reviewed but not considered relevant to the parent's complaint.

Background Information

This investigation involves a six-year-old student currently enrolled in the first grade in USD #230. He initially began receiving special education and related services at age 3 under the exceptionality category of Developmentally Delayed in USD #233 (Olathe Public Schools). In addition, he has a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and takes medication.

The student enrolled in kindergarten at Dayton Creek Elementary School (DCES) in USD #230 where his mother was a teacher during the 2021-22 school year. He began the school year by attending school partial days due to significant behavioral concerns. He received specialized instruction for behavior as well as occupational therapy (OT). He made much progress and was attending school for full days by the end of the school year. His mother enrolled him into kindergarten for a second time at the Holy Spirit School for the 2022-23 school year.

He started attending the Holy Spirit School in August 2022 and received special education consultation for behavior and OT services at his neighborhood school, Prairie Creek Elementary School (PCES). The school year started out strong with nine days of appropriate behavior at Holy Spirit School; however, he then began to display inappropriate behavior and his IEP was amended on September 23, 2022 to add direct specialized instruction for appropriate behavior.

The student continued to display inappropriate behavior and the mother enrolled the student as a kindergartener at PCES on October 17, 2022. His IEP was amended several times but the student continued to display inappropriate behavior for which ultimately resulted in emergency safety interventions being used to keep everyone safe.

At the end of November, the parent and the district agreed to transfer the student back to DCES as a first grade student with the peers he was familiar with from kindergarten. The student started attending this school in mid-December and was attending two hours per day. He continues to attend DCES as a first grade student and is now able to attend school for three hours per day with paraprofessional support, specialized instruction for behavior, and OT 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 parents raised two issues that were investigated.

Issue One

> Issue One: The USD #230, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate transfer procedures during the 2022-23 school year which resulted in a denial of a free appropriate public education (FAPE) to the student.

Positions of the Parties

The complainant alleged that USD #230 failed to allow the student to start school in a timely manner when he transferred from Holy Spirit School to Prairie Creek Elementary School on October 17, 2022 and again when the student transferred from Prairie Creek Elementary School (PCES) to Dayton Creek Elementary School (DCES) at the end of November 2022. The parent reported there were significant delays of more than one week between the date of enrollment at each building and the first day the student was allowed to attend classes in each school building. She believes USD #230 denied the student FAPE by these delays.

The district indicated that the IEP teams at both buildings met and developed plans in a timely manner for making a smooth transition between Holy Spirit School and PCES in mid-October 2022 and again between PCES and DCES at the end of November 2022.

School staff met and consulted with the parent and then provided the necessary training for the staff in each building to meet the unique needs of the student. USD #230 reported that the mother was in agreement with the plans and provided written consent for all amendments to the student's IEP; however, staff stated, "Subsequent communications or complaints show a change in support, agreement or desired outcome for the student from the parent."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #230.

The IEP in effect during the 2022-23 school year was developed on March 28, 2022 by the IEP team at Dayton Creek Elementary School (DCES) in USD #230. This IEP provided paraprofessional support, direct instruction for behavioral goals, OT services to address fine motor skills, speech therapy to address articulation errors, and behavioral consultation for teachers in the first grade at DCES even though the parent requested the student be retained in kindergarten. The IEP also included a Behavior Intervention Plan (BIP).

USD #230 staff noted that the parent revoked consent for the speech therapy services in both the 2021-22 and the 2022-23 school years because the student was already receiving speech therapy privately and the parent "did not care for the SLP [speech/language therapist] at DCES".

At the beginning of the 2022-23 school year, the parent enrolled the student in kindergarten at Holy Spirit School. Interviews and documentation show the parent requested an IEP team meeting on August 22, 2022 to change services due to the student's enrollment at the parochial school. The parent and USD #230 agreed to amend the student's IEP to continue to provide 40 minutes per week of OT services; delete 100 minutes per week of direct instruction for behavior and 300 minutes per week of behavior support in the general education setting; and add 15 minutes every nine weeks of indirect consult in the area of behavior. USD #230 provided the parent with prior written notice (PWN) on August 25, 2022 and the parent gave written consent for these changes on August 26, 2022.

On September 19, 2022, the parent sent an email to Kathleen Krull, Special Education Teacher at Prairie Creek Elementary School (PCES), requesting that the student's IEP be amended to also include 60 minutes per week of direct instruction for behavior. USD #230 provided the parent with PWN on September 23, 2022 and the parent gave written consent for these changes on September 23, 2022.

The parent emailed Ms. Krull on September 23, 2022 at 3:05 p.m. indicating that the special education teacher from DCES, Daneen Holloran, would be a good contact for ideas of what she did with his social group last school year because it was very successful. The parent also stated:

> He went 9 days with perfect behavior. Then one day he was punch [sic] and his pants pulled down and the next day he lost his mind at school. He currently has two aides that are with him, one in the morning and one in the afternoon. He is alone for about an hour and a half a day. He [sic] teacher is very experienced but very old school and there is a lot of sit and get and that is a struggle for him. He is currently on 4 meds for ADHD and anxiety (and sleep). We just added one this week and he has seemed to calm but I'm not sure how long that will last with the classroom environment the way that it is. His teacher would be happy if he switched schools ASAP….just a little background. The principal and assistant principal are not ready to even discuss that yet.

On October 12, 2022, USD #230 reported that parent shared the student was highly dysregulated and had several behavior incidents which included emergency safety interventions (ESI) and out-of-school suspension (OSS). The mother was concerned the student would be expelled from the private school.

On October 13, 2022, Amanda Martell, Behavior Interventionist, set up observations at Holy Spirit School for October 17 and 18, 2022 to provide guidance for his current level of behavioral support at the parochial school as well as his behavior needs if he transferred back to the public school.

On October 14, 2022 the parent emailed Ms. Krull stating she had decided to enroll the student back at Prairie Hills Elementary School. On October 17, 2022, the parent emailed Jody Cole, Principal at PCES, of her intent to enroll the student at the beginning of the second quarter, which according to the district calendar was on October 21, 2022. The parent indicated her goal was to get the student's behavior regulated and then re-enroll and return him to the Holy Spirit School

USD #230 reported that a paraprofessional was hired to provide one-to-one support similar to what was provided at the parochial school setting as well as provided with onboarding training between October 19 and October 25, 2022. In addition, Crisis Prevention and Intervention (CPI) training was provided to the student's general education teacher and the newly hired paraprofessional as well as the crisis team at the PCES.

On October 20, 2022 at 2:48 p.m., the mother emailed Ms. Cole stating:

> I was just checking to see if there is an update on when you will be ready for the student? He has been out of school for a week so I would really like to get him started back as his anxiety is growing by the day. I also don't want to rush the start where you are not ready for him.

On October 20, 2022 at 4:35 p.m., Ms. Cole emailed the parent stating,

> Thank you so much for your grace and allowing us to get a plan in place. Today half of the team was able to meet with Daneen Holloran. She shared all the things they used at DCES [Dayton Creek Elementary School] so the student would be successful. It looks the entire team will be able to meet next Wednesday so we can finalize a plan. Would you be able to meet with us on Thursday, October 27 at either 9:00 or 1:00 to discuss our transition plan for the student to PCES [PCES]? My hope is to meet with you on Thursday and then get the student started on Friday.

Documentation and interviews found the student's IEP team met on October 27, 2022 to review his IEP and develop a plan to provide services upon his enrollment. The Team Meeting Notes summarize the team's recommendations as follows:

> The team originally suggested first grade, but after discussion, it was decided that he would begin at PCES in kindergarten. The parent felt strongly that it will be important to get his behaviors managed before moving on the higher academic demands. The team decided to begin phasing the student into full days by starting 8:30am-10:30am and adding an hour each week until he was full-time by the beginning December, barring any changes.

The student's first day of attendance at PCES was on October 28, 2022. The first behavioral incident resulting in ESI occurred on October 31, 2022.

The IEP team met on November 1, 2022 to review and revise the IEP in light of the behavioral concerns. The team agreed to amend the student's IEP to increase direct instruction for behavior from 60 minutes per week to 75 minutes per week and to add behavioral support for 2,140 minutes per week. USD #230 provided the parent with PWN for this significant change

of placement and material change of services on November 1, 2022 and the parent provided written consent on November 2, 2022.

Three additional behavioral incidents resulting in ESI occurred on November 4, November 8, and November 11, 2022. The student was assigned one day of OSS for the November 8 incident and two days of OSS for the November 11 incident.

It is noted that the IEP team had already met on November 10, 2022 to review and revise the student's IEP in light of the behavioral incidents. USD #230 proposed changing the student's schedule from a full-day schedule to a partial-day schedule with the student attending school from 8:00 until 11:30 each school day for a total of 1350 minutes per week of specialized instruction and related service support. Supports for the student included increases in sensory breaks, adjustments to the behavior intervention plan (BIP), and a reduction in the school day with a plan to gradually increase time at school as the student's stamina increased. The parent was provided with a PWN dated November 10, 2022 which described this significant change of placement and material change of services. The parent provided written consent for this change on November 16, 2022.

USD #230 reported that after the fourth ESI and OSS event on November 11, 2022, the parent expressed dissatisfaction with the services provided at PCES. The parent informed the school she had decided to keep the student home from school until after the Thanksgiving break, November 16, 2022 through November 27, 2022.

Ms. Krull emailed the mother on November 18, 2022 at 11:11 a.m., stating:

> . . . I am reaching out to schedule a re-entry meeting for the student's return on November 28th. Per USD 230's special services handbook, we are required to meet upon a student's return to school after a suspension. Although the student's suspension is over on Wednesday November 16th, this re-entry meeting is to occur on the first day that the student returns. Because the student is not returning until Monday November 28th, we will need to have a meeting on the 28th. Re-entry meeting are not formal IEP meetings, but instead serves as a time for the student's team to formulate a plan for his re-entry . . .

At the re-entry meeting on November 28, 2022, the mother requested that the student be transferred to DCES where he had previously been successful. The Team Meeting notes reflect that the parent believed the relationship between the student and the staff at DCES was positive and stated:

> A relationship with the student is the key to his success. Parent (mom) doesn't feel we know the student as a real kid. We only know him as a child with dysregulation. He doesn't feel safe at PC [PCES] nor does he trust people at PC. Dayton Creek knows the student and is familiar with him. Mom said that he was very nervous and high anxiety about coming to school . . . Parent said she would do whatever it takes to get him to DC [DCES].

The Team meeting notes also stated, "Parent stated a slow transition DC is absolutely fine. If he needs to be assigned to 1st grade, and just start for an hour each day that is ok with her as she just wants him back at DC [DCES]. They will do whatever it takes."

The Team meeting indicated administrative approval would be sought to make a transfer between the elementary school buildings by Dianna McKenzie, Assistant Director of Special Education, and a decision would be made soon. If approved, DCES staff must be trained in CPI, ACEs [Adverse Childhood Experience] and TIC [Trauma Informed Care].

Dianna McKenzie, Assistant Director of Special Education, visited with the parent to discuss the transfer between PCES and DCES. She summarized the key points of this discussion in an email to Darcy Sly, Principal at DCES, and Cindy Dziadosz, Director of Special Services, in an email dated December 2, 2022 at 3:43 p.m. stating:

- She is happy he will be in Grade 1 with Ms. Golubski and supported by Ms. Hollern.
- She is fine with the student starting on December 12 for two hours from 8:00-10:00 and continuing the two hours on Jan. 5 and 6 with the possibility of increasing time slowly after that
- She will meet with us Dec. 9 but can be available between 12:30-3:00 if your team would like to meet earlier. Please send a notice of meeting to confirm the time.
- I told her about the full-day of CPI as well as ACEs and TIC
- She shared the behavior system they use at home. I will forward that to you.
- She is fine with Sierra [SLP at DCES] completing the SLP evaluation at DCES next week. Sierra should contact her to set up the day and time.
- I sent her the interagency release of information. She agreed to fill it out for the student's doctor and therapist.
- She asked if your staff could send home some math work for him to do. The student's grandfather will pick it up.
- I asked her to be thinking, in preparation for the Dec. 9 meeting, what success would look like at DCES and also what success would not look like since I was sure that would be a point of discussion.
- The mother asked that Amanda [Martell] not attend the meeting on Dec. 9. She is fine with Amanda doing training for staff.

Interviews and documentation found the IEP team met on December 9, 2022 with the student's first day of attendance at DCES being December 12, 2022. Another IEP meeting was held on January 13, 2023 to review the results of the SLP evaluation and to review and revise the student's IEP as necessary.

Applicable Regulations and Conclusions

Federal regulations implementing the Individuals with Disabilities Education Act (IDEA), at 34 C.F.R. 300.323(e), require specific procedures by followed when a student transfers from one public agency to a new public agency within the same state. The new public agency, in consultation with the parents, must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either adopts the child's IEP from the previous public agency; or develops, adopts, and implements a new IEP following all applicable requirements in federal regulations at C.F.R. 300.320 through C.F.R. 300.324.

In addition, state regulations at 72-3462 requires the special education services must be provided to any student with a disability who resides within the district regardless of whether the private/parochial school is located within the school district boundaries.

In this case, the parent was specifically upset with the delay in starting special education and related services following the transfer between Holy Spirit School to PCES in October 2022 and the transfer between PCES and DCES in December 2022.

It is noted that USD #230 was the responsible public agency for providing the student's special education services when the student attended all three of the school buildings – Holy Spirit School, PCES, and DCES. Based on that determination, the student did not transfer from one public agency in Kansas to another public agency in the same state. For this reason, there is no responsibility for USD #230 to consult with the parent regarding providing services comparable to those described in the child's IEP from the previous school building until the student's IEP has been reviewed and revised, as necessary.

Instead, 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.

According to federal regulations at 34 C.F.R. 300.324(a)(4), in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. The IEP may also be amended with an IEP team meeting held in compliance with federal regulations at 34 C.F.R. 300.324(b).

In either case, 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. Kansas 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. A material change in services is defined as a 25% or more change in the amount of any one service and a substantial change of placement is defined as any change that affects 25% or more of the student's school day.

In this case, USD #230 was responsible for implementing the student's current IEP when the student transferred between Holy Spirit School to PCES as well as between PCES and DCES. Interviews and documentation found the parent intended for the student to start school on PCES at the beginning of the second quarter on October 21, 2022. An IEP team meeting was held on October 27, 2022 and the IEP was amended with parent input. Records show the student's first day of attendance at PCES was on October 28, 2022. The parent was provided with PWN describing the material change in services on November 1, 2022 and the parent provided written consent for the changes on that same date.

It is noted that four incidents requiring ESI occurred between October 31, 2022 and November 11, 2022. An IEP team meeting was held on November 10, 2022 to discuss these concerns and to review and revise the IEP with parent input. The parent was provided with PWN for a material change in services on November 10, 2022 and provided written consent for this change on November 16, 2022.

Because the parent kept the student home between November 16 and November 27, 2022, a disciplinary re-entry meeting was not held until November 28, 2022. At that meeting, the parent requested for the student to transfer from PCES to DCES. This parent-requested building transfer was approved on December 2, 2022 and a transition plan was created with parent input in a phone call with USD #230 staff. An IEP team meeting was held on December 9, 2022 and the IEP amended with parent consent. Records show the student's first day of attendance at DCES was on December 12, 2022. The parent was provided with PWN describing the material change in services on December 13, 2022 and the parent provided written consent for the changes on December 15, 2022. Clearly there were some delays. However, the delays were short delays and were reasonable due to the need to revise the student's IEP to prepare for the transfer of the student to a new school environment.

Based on the foregoing, a violation of the IDEA requirements related to the delay in starting services when the student transferred between school buildings during the 2022-23 school year *is not substantiated*.

Issue Two

ISSUE TWO: The USD #230, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP(s) as written, specifically the behavior intervention plan (BIP) on the days that an emergency safety intervention (ESI) was used with the student during the 2022-23 school year.

Positions of the Parties

The complainants alleged that USD #230 failed to implement the student's BIP which resulted in disciplinary action and ESI while he was enrolled at PCES for 11 school days between October 28, 2022 and November 11, 2022. The parent believes that if school staff had followed the BIP, the student's behavior would not have escalated to the point that ESI would have been required on October 31, November 4, November 8 and November 11, 2022.

The district responded that the student's BIP was followed in all instances prior to ESI becoming necessary. Staff noted that the parent filed a formal complaint with the USD #230 Board of Education per School Board Policy GAAF on January 6, 2023. An internal investigation was conducted and the Findings of Fact were adopted by the Board of Education on February 13, 2023, which found that the student's behavior escalated to the point that he was physically violent towards others in close proximity to him in each incident. The Findings of Facts stated:

In all four ESI incidents, the student was physically violent towards other in close proximity to them such that he had the present ability to affect such physical harm. Most of the time, the student actually caused physical harm or was conducting himself in a way that he had the present ability to affect such physical harm prior to ESI being used.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #230.

The findings of Issue One are incorporated herein by reference.

The BIP was developed as part of the March 28, 2022 IEP and included a functional behavioral assessment (FBA) that identified the problem behavior as physical aggression towards others with objects and physical aggression towards others with his hands and/or feet. The primary function of his behavior was noted as sensory (overstimulated) and to gain access to something that he wants.

The BIP includes Replacement Behavior Goals and Teaching Steps, Antecedent Strategies, Reinforcement and Other Positive Supports, a Reactive Plan, and a Crisis Plan.

The Reactive Plan in the BIP for throwing things in the classroom requires the student to be removed from the classroom and allowed to go to his quiet area to calm down. For hitting/pushing/kicking, the student is to choose the zone he is in [from the behavior management program "Zones of Regulation"] and then use a strategy to regulate his behavior.

The Crisis Plan in the BIP requires:

- Staff will wear radios
- Not talking with the student when he is dysregulated
- Move the student away from peers, if possible, if not peers are removed
- Student needs space with an adult for 5-10 minutes to be reminded to use safe hands, receive sensory input of his choice, as well as deep pressure "hugs"
- Student will need 10-15 minutes of quiet time to regulate his body once he is no longer physical

Interviews and documentation showed there were four incidents while the student attended PCES where the radios were used to gain staff assistance when the student's behavior escalated to the point that ESI was required as described below:

- The October 31, 2022 ESI incident occurred in the special education classroom where the student was calming with staff after being asked to take a break from the classroom. He threw objects including a book, chair and waste can and struck staff as well as kicked staff. ESI was used when the student began scratching the staff member's face and grabbing the collar of her dress.
- The November 4, 2022 incident occurred in the general education classroom when the student refused to transition from centers to the carpet area for calendar time. He threw his iPad and pencil which struck the teacher. His peers were exiting the room and ESI was used after he hit and kicked two peers and threw a water bottle at the teacher.
- The November 8 incident occurred in the general education classroom when the student returned to the classroom after taking a sensory break. He used his dry erase marker to scribble on his white board and iPad. When re-directed, he threw the marker at a peer and the students were evacuated from the classroom. As the peers were leaving, the student grabbed a peer's white board from his hands and then threw it at the peers striking staff. ESI was used after the peers had exited when the student elbowed a staff member and began throwing objects at the staff.
- The November 11 incident occurred with his general education class in the pod area when the para asked the student what zone he was in so that he could pick an appropriate regulation strategy. The student became very agitated and broke his pencil and had it in his fist when he threw himself on the floor near his peers. Staff asked the student to take a break but he immediately began kicking and hitting at others. ESI was used to remove the student from the pod area where his behavior could be observed by others.

The Findings of Facts adopted by the Board of Education stated that the independent investigator interviewed 10 witnesses and had access to the ESI documentation, school records, reports, staff notes, and emails. The findings relevant to the implementation of the BIP were as follows:

- In all circumstances, before ESI was used, less restrictive alternatives were considered and deemed inappropriate or ineffective under the circumstances by the school employees witnessing the student's behavior.
- There were multiple attempts to use de-escalation techniques in all four ESI incidents prior to the use of ESI. In fact, it appears as though the team in all circumstances went to great lengths to create and foster scenarios in the student would not escalate and had strategies for what to do if the student did escalate.
- In all four of the ESI incidents, there were multiple employees that witnessed the student's behavior. Without fail, they all believed that the student was being treated appropriately, compassionately, and consistently but that due to the student's escalations, he was either physically harming someone when the ESI occurred, or he had the present ability to harm someone and appeared that he was attempting to do so.

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 student's IEP initially was developed on March 28, 2022 and included an FBA and BIP as well as amendments affecting services and placement on or about August 22, 2022; September 23, 2022; October 31, 2022; and November 11, 2022. Interviews and documentation support a finding that USD #230 staff did implement the Reactive Plan and the Crisis Intervention plans included in the BIP prior to using ESI on the four dates while attending PCES.

Based on the foregoing, a violation of special education statutes and regulations i*s not substantiated* for failing to implement the student's IEP, specifically the BIP, on October 31, November 4, November 8, and November 11, 2022.

Investigator

Nancy Thomas, M.Ed., Complaint Investigator

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.

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 #305
ON JANUARY 26, 2023
DATE OF REPORT March 1, 2023

This report is in response to a complaint filed with our office on behalf of the student by his parents, The parent(s). In the remainder of the report, the student will be referred to as "the student." The student's parents are the parent(s) and in the remainder of this report they will be referred to as "the mother," "the father," "the parents," or "the complainants."

The complaint is against USD #305, Salina Public Schools and Central Kansas Cooperative in Education (CKCIE). In the remainder of the report, the "school," the "district," "CKCIE," the "Coop: and the "local education agency" (LEA) shall refer to USD #305.

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 26, 2023 and the 30-day timeline ends on March 1, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the mother by telephone on February 4, 2023.

Donna Wickham and Gwen Beegle, Complaint Investigators interviewed Sarah Loquist, General Counsel for CKCIE, Mary Gardner, Special Education Coordinator, Lori Munsell, Principal, Kristin Prophet, Occupational Therapist, Marissa Koerperich, Special Education Teacher, and Lynette Lorenson, School Psychologist on February 23, 2023.

The Complaint Investigators also received emails from the parent and USD #305 between February 2, 2023 and February 23, 2023.

In completing this investigation, the Complaint Investigators reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

Score Report from Woodcock Johnson IV, date of administration January 5, 2021
Occupational Therapist notes dated February 1, 2022 through January 25, 2023 (sic)

Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement and Request for Consent dated February 2, 2022a
Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement and Request for Consent dated February 2, 2022b, No parent consent given dated February 8, 2022
Individualized Education Program (IEP) including Conference Summary and IEP Team Considerations, dated February 2, 2022
Certified Occupational Therapist Assistant (COTA) Logs dated from February 3, 2022-May 12, 2022
Occupational Therapist (OTR) Logs dated February 1, 2022 - January 26, 2023
Notice of Meeting, dated February 8, 2022
Conference Summary and IEP Team Considerations, dated February 17, 20222
Prior Written Notice (PWN) for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement and Request for Consent dated March 11, 2022a
Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement and Request for Consent dated March 11, 2022b
Notice of Special Education Meeting (NOM), dated April 26, 2022
Conference Summary and IEP Team Considerations, dated April 29, 2022
Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement and Request for Consent dated April 29, 2022
Individualized Education Program (IEP) revision, dated April 29, 2022
Notice of Meeting (NOM), dated September 9, 2022
Notice of Meeting, dated September 20, 2022
Notice of Meeting, dated September 26, 2022
Notice of Meeting, dated October 7, 2022
Conference Summary and IEP Team Considerations, dated October 27, 2022
Audiotape of the October 27, 2022 IEP meeting provided by the parents
Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement and Request for Consent dated October 27, 2022
Individualized Education Program (IEP) revision, dated October 27, 2022
Email from Occupational Therapist to parent dated October 31, 2022, no time provided
Email from parent to Occupational Therapist dated November 1, 2022, no time provided
Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated November 3, 2022, parent signed consent November 3, 2022
Email from Educational Program Consultant to parent dated November 11, 2022 at 2:25 p.m.
Notice of Special Education Meeting, dated January 9, 2023

Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement and Request for Consent dated January 17, 2023, No Consent signed February 2, 2023
Score Profile from the Adaptive Behavior Composite, Vineland-3 Multirater Report, page 3, undated
Writing Samples, undated
Evaluation/Eligibility Team Report dated January 25, 2023
Individualized Education Program, dated January 25, 2023
Email from parent to school psychologist dated January 26, 2023, no time indicated
Written note from school psychologist to parents dated February 6, 2023
Video of student cutting with scissors, dated February 7, 2023
Video of student opening a bowl lid, dated February 7, 2023
Prior Written Notice for Identification, Initial Services, Educational Placement, Change in Services, Change in Placement and Request for Consent dated February 8, 2023
Progress Reports for Quarter 3 and Quarter 4 2021-2022 school year; ESY, summer 2022; Quarter 1 and Quarter 2 2022-2023 school year
District Response to complaint dated February 14, 2023

Background Information

This investigation involved a fourth-grade student enrolled at Huesner Elementary in USD #305 and receives special education services through the Central Kansas Cooperative in Education (CKCIE). He receives special education and related services as a child with autism per the Individuals with Disabilities Education Act (IDEA) in a self-contained multi grade classroom. He received individualized instruction in reading, written language and mathematics in his special education classroom based on his reading and math levels. He attends specials and a morning meeting in his fourth-grade classroom. He additionally receives speech-language and occupational therapy services.

The student transitioned from part C services as a 3-year-old under the label of developmental delay. He received speech and early childhood services in an integrated preschool classroom. In 2014 he received a medical diagnosis of autism. The student has attended Heusner Elementary since kindergarten. Kindergarten through second grade he received instruction in a self-contained classroom for students with autism spectrum disorder. He was retained in kindergarten at the request of his parents due to his skill level and the prospect of having more time in the general education classroom. Beginning in third grade the district closed the specialized Autism program to promote inclusion in home schools. His family opted for him to remain at Heusner, but he switched to a multi-aged self-contained classroom to allow for smaller class size and to provide academics at his level and pace. He works in his own work carrel with decreased visual distractions where personalized visuals can be posted. The child lives at home with his parents.

ISSUE ONE: The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide proper notice to the family for IEP meetings and proposed amendment meetings to ensure the parent had an opportunity to participate during the past 12 months.

Positions of the Parties

The complainant alleged that the district constantly scheduled meetings during the past year and did not give adequate notice or scheduled meetings when the parent was not available to meet.

The district denies these allegations stating meetings were scheduled to discuss progress and change the student's educational program as was deemed necessary. The district states that the issues surrounding scheduling were resolved through mediation that occurred during fall 2022.

In regard to adequate notice they cite only one known instance when the 10 days notice was not provided. They state when the parents did not waive their right to 10 days notice to meet about the IEP on September 14, 2022 during parent-teacher conferences the meeting was halted and rescheduled at a later date to provide adequate notice. The district describes another instance with the January 25, 2023 Notice of Meeting document that inaccurately indicated that the Notice of Meeting was hand delivered, when in fact it was delivered by the mediator. They state that this Notice of Meeting offered adequate notice for the meeting.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #305.

Eight Notices of Meetings were provided to the parents during the past twelve months. Each of these proposed meetings with dates, actions and 10-day criteria are included below.

Date on NOM	Proposed meeting date	Purpose of meeting	Met 10 calendar days of notice or parent waived
1/13/22	2/1/22	Annual IEP review	Adequate notice
2/8/22	2/17/22	District meeting called	Adequate notice
4/6/22	4/29/22	District called meeting	Adequate notice
9/9/22	9/14/22	District called meeting	Not waived/ meeting not held
9/20/22	10/18/22	District called meeting	Adequate notice
9/26/22	10/20/22	District called meeting	Adequate notice
10/7/22	10/27/22	District called meeting	Adequate notice
1/9/23	1/25/23	District called meeting	Adequate notice

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.501(b)(2); 34 C.F.R. 300.322 (b)(c) K.S.A. 72-3431 and K.A.R. 91-40-17(a)(2) parents are to be provided notice of meetings related to eligibility, evaluation, reevaluation, IEP development, provision of a free appropriate public education (FAPE) for their child and educational placement decisions, to ensure that they have the opportunity to participate in the meetings. In Kansas parents must receive 10 calendar-days written notice. On the one instance when the district planned a meeting without adequate notice the parent did not waive their right to the notice and the meeting was not held and was rescheduled at a later date.

There are no federal or state regulations to define excessive or constantly occurring meetings. Each Notice of Meeting indicated a purpose, and the notes and actions of the meetings indicated the purpose was addressed. It is noted however, that meetings were held approximately monthly. If meetings are to occur on a regular, repeating basis it may be important for the family and district to determine a regularly agreed upon timeframe and schedule ahead.

Based on the foregoing, according to IDEA and Kansas Special Education regulations it is not substantiated that the district failed to provide adequate notice for called IEP and IEP amendment meetings.

> ISSUE TWO: The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the parent an opportunity to participate in meetings with respect to educational services and subsequently reduced services without parent participation/consent during the past 12 months.
>
> Specifically, the district incorrectly reduced occupational therapy services during the past twelve months in spite of the parent continuing to refuse consent for these reductions.

Positions of the Parties

The complainants alleged the district wanted to eliminate their child's occupational therapy (OT) services and continued to call meetings providing Prior Written Notices reducing his service minutes, changing from direct services to consultation or eliminating services altogether. When the complainants refused these reductions the district began reducing his service minutes less than 25% and stated they would continue until they eliminated occupational therapy services altogether. The parents believe their child continues to need OT

services to improve handwriting and to assist with independent living skills such as toileting hygiene and shoe tying.

The district responded that their evaluation and service logs show that OT services are not educationally necessary for the student at this point. He has been evaluated by the district and by an outside Occupational Therapist. The district states that the scheduled meetings and subsequent PWNs were to assist the family to understand that OT services in special education services were not in the student's best interest. They state that the student has the motor skills for handwriting and his handwriting will improve with practice during classroom activities, not pull-out occupational therapy. They additionally cite that he is missing opportunities with peers when attending OT.

The district stated they reduced services one time less than 25% change (to 23 minutes of direct OT services weekly in the special education setting) so they did not have to obtain parent consent. The district states that the student continues to receive 23 minutes of direct OT services weekly in the special education setting because the parents have not consented to reductions, shifting to consultation or elimination of OT services at this time.

Finally, they state they have provided resources to the family for toileting and shoe tying. Further, their evaluation shows that the student is functioning adequately at school and does not interfere with his educational participation. The district additionally states he has access to a paraeducator to assist him and he wears slip on shoes.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #305.

The findings of Issue One are incorporated herein by reference.

The district states that the student received thirty minutes of direct occupational therapy service weekly in special education on the IEP in effect prior to the February 2, 2022 IEP.

The Draft February 2, 2022 IEP shows that 15 minutes of OT consultation per quarter was proposed. This would constitute a substantial change of service and require consent. The February 2, 2022 PWN and Summary Meeting notes show that the parents did not consent to this change and 30 minutes of direct occupational therapy service weekly in special education were included as the OT services in the February 2, 2022 IEP in effect.

A Prior Written Notice dated March 11, 2022 proposed moving the student to OT consultation with no minutes or frequency specified. The parents did not consent, and the IEP was not amended with this change.

A Prior Written Notice dated April 29, 2022 proposed reducing the student to 23 minutes of direct occupational therapy service weekly. This proposal did not require parental consent and

the student's IEP was amended to 23 minutes of direct occupational therapy service weekly in the special education setting.

The district reports that they continued providing 30 minutes of direct occupational therapy service weekly for the remainder of the 2021-2022 school year to provide the student and family with consistency.

The occupational therapy service records show that the occupational therapy services continued at 30 minutes of direct service weekly through the 2021-2022 school year.

An undated email from the principal to the parent in response to an email dated September 22, 2022 at 6:42 p.m. stated,

> We will be available on October 20th at 3:30 p.m. to discuss all of your concerns at that meeting, and if a decision regarding the student's OT services is made at the meeting, you will also be given a Prior Written Notice detailing what was decided. Please understand that there are only specific instances where the school must gain parental consent in order to make changes to the IEP. If the team proposes any changes at that meeting, you may be asked to provide consent or you may only be notified of the changes that will be made prior to the change. Should the team decide upon any changes that do require your consent, you will be given a reasonable amount of time to consider those changes before they are implemented. You would not be expected to make a final decision at that meeting, which will allow you time to process your feelings and consider the recommendations as a family.

The Conference Summary IEP Team Considerations, dated October 27, 2022 recorded that the district planned to reduce OT time by less than 25% so parent consent was not required:

> She let them know that if they choose not to agree to consultation she would be decreasing OT time by less than 25% so that the student would receive 18 minutes of OT services 1 time a week in his special education classroom. This is recommended by the school team as the student has the fine motor skills to participate in classroom instruction. Having the OT sit with him hinders his independence and is not least restrictive. This is not a material change. It does not require parent permission but they will be provided with written notification of the change.

During the recording of the October 27, 2022 IEP Amendment the OT stated to the parent that if the family did not provide consent to move to OT consultation they will receive a PWN reducing the OT direct service minutes to 18 minutes since parent consent was not needed.

The records indicate that parent consent was not obtained for OT consultation in the October 27, 2022 PWN, and do not show that the direct service minutes were reduced to 18 minutes.

The district reports that the parent asked for mediation during the October 27, 2022 IEP amendment meeting so the direct service minutes were not reduced to 18 minutes.

A November 11, 2022 email from the Kansas State Department of Education reported "The attorney did also share that services should only be reduced by 25% or more once a year and that the intent of the law is not to reduce services "little by little" until they no longer occur."

The Prior Written Notice dated January 17, 2023 for the January 25, 2023 Re-evaluation/Re-eligibility Report and Annual IEP propose discontinuing OT services. The parents refused consent and the draft IEP continues with 23 minutes of direct OT services in the special education classroom.

Applicable Regulations and Conclusions

According to K.S.A. 72-3430(b)(6) the school must obtain parental consent to make a substantial change in services (25% or more of the frequency or duration of any one service). If the parent refused to consent to a material change in services, the school may, but is not required to, pursue the material change in services by using mediation or due process procedures.

In this case the district proposed changes to occupational therapy services for the student that meet the Kansas definition of a material change in services during the past twelve months and the parents refused to provide consent each time. The district responded by continuing to provide occupational therapy Services at the same level of service as specified in the IEP.

During the past twelve months the district reduced occupational therapy Services less than 25% one time as reported on April 29, 2022 and amended the IEP accordingly.

In the September 20, 2023 Notice of Meeting for the October 27, 2022 IEP amendment meeting the district stated that they would reduce the student's OT services less than 25% to 18 minutes of direct services one time each week. The PWN and IEP amendment dated October 27, 2022 does not reflect this topic. During interview the district reported that they agreed to not reduce the service as the parent requested mediation for occupational therapy services.

During the October 27, 2022 IEP amendment meeting the Conference Summary IEP Team Considerations record, "the parent asked why there have been so many meetings within the last year. The Special Education Coordinator explained that the team feels professionally that he needs to have the consultation level of OT services. Meetings have been held to work with the family on meeting this need. The plan will be to keep reducing the amount of direct OT services he receives."

Additional PWNs, record proposals for offering options to the parents to reduce services substantially or the service would be reduced less than 25%. It is noted that no additional reductions in occupational therapy services were made.

Clasen v. Unified Sch. Dist. No. 266, 75 IDELR 5(D. Kan. 08/27/19) the United States District court in Kansas addressed an allegation that incremental changes (less than 25%) made to an IEP over time could result in a change to circumvent obtaining parent consent for a material change in services or a substantial change in placement. The courts found in this case that two changes of less than 25% during a calendar year that summed to over a 25% change in services did not circumvent obtaining parental consent.

It is found in this case that the district only changed the services one time during the past twelve months and had the authority to make the change as parental consent was not necessary to make the change.

Based on the foregoing, according to Kansas special education regulations the allegation that the district incorrectly reduced occupational therapy services in spite of the parent not consenting to the changes is not substantiated.

ISSUE THREE: The USD #305, 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 when the District made or refused to make a change in the provision of a free appropriate public education (FAPE).

Positions of the Parties

The complainants alleged that Prior Written Notices were written containing multiple actions such as changing placement or IEP goals that always included changes to occupational therapy services. Some of the proposed actions required parent consent and some did not. Some actions were not completed or confusing because parent consent to substantial changes was not given.

The district responded that it has gone as far as to provide two separate PWNs allowing the parents to consent to the parts they wanted to have implemented and to refuse consent for changes to occupational therapy.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #305.

The findings of Issue One and Two are incorporated herein by reference.

PWN Date	Proposal for material changes	Material Change	Consent obtained	Action
2/1/22	OT consult 15 minutes/quarter	Yes	No	No change continue with 30 minutes of direct Occupational Therapy service weekly in special education
2/1/22	Update goals during IEP, continue speech	No	n/a	Change to IEP
2/17/22	Conference meeting to discuss OT	n/a	n/a	No IEP amendment nor PWN written, no decisions
3/11/22	Move academic services to special education setting, move speech to special education setting	Yes	Yes	Consent on 3/11/22 revised IEP
3/11/22	Reduce OT services	Yes	No	No change continue with 30 minutes of direct Occupational Therapy service weekly in special education
4/29/22	OT consultation	Yes	No	Second PWN provided for less than 25% reduction of OT services
4/29/22	23 minutes of direct Occupational Therapy service weekly in special education Refuse to provide formal letter documenting reasons for 100% elimination of OT	No (less than 25%)	N/A	23 minutes of direct Occupational Therapy service weekly in special education

PWN Date	Proposal for material changes	Material Change	Consent obtained	Action
9/14/22	OT consultation or reduction of less than 25%	Yes	No	23 minutes of direct Occupational Therapy service weekly in special education
10/27/22	OT consultation and if not 18 minutes of direct Occupational Therapy service weekly in special education	Yes	No	23 minutes of direct Occupational Therapy service weekly in special education; did not write PWN to reduce to 18 minutes weekly.
11/3	Propose reevaluation	Yes	Yes	evaluation plan
1/17/23	Discontinue OT services	Yes	No	23 minutes of direct Occupational Therapy service weekly in special education
1/17/23	Update goals for annual IEP and continue speech	No	n/a	Revised IEP
2/8/23	Respond to parent requests for changes to IEP	No	n/a	Cursive, accommodations, challenging math goals

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.503(a)(2) and K.S.A. 72-3430(b)(2) the Prior Written Notice is one of the procedural safeguards that is in place for certain proposed special education actions. This notice must be provided to parents within a reasonable amount of time before the date the school or the parents propose to initiate or change special education and related services (FAPE) to their child.

According to K.S.A. 72-3430(b)(6) the school must obtain parental consent to make a material change in services (25% or more of the frequency or duration of any one service). If the parent refused to consent to a material change in services, the school may, but is not required to, pursue the material change in services by using mediation or due process procedures.

In this case the district proposed to make a material change in services for the student six times and each time the parents refused consent. As a result, the district correctly continued the service.

In addition the district proposed to make a material change in placement one time during the last twelve months and the parents consented. The IEP was subsequently amended and implemented.

Additional PWNs were written refusing and accepting parent requests not requiring consents and IEP amendments were implemented.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to provide parents with appropriate prior written notice when the district made or refused to make a change in the provision of a free appropriate public education (FAPE).

> ISSUE FOUR: The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent input into the reevaluation process during the past 12 months, specifically the Reevaluation that was proposed in the November 3, 2022 Prior Written Notice and initiated on November 3, 2022 when parent signature for consent was received.

Positions of the Parties

The complainant alleged that they have expressed concerns about the student's independent living skills, specifically toileting and tying his shoes and occupational therapy. Further they requested the evaluation include a sensory profile.

The district conducted another evaluation in January 2023 at the request of the parents who were opposed to reducing occupational therapy services. They further state that the parent submitted this complaint while the district was attempting to discuss the evaluation results.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #305.

The findings of Issue One, Two and Three are incorporated herein by reference.

The PWN dated November 3, 2022 indicates the parent requested the reevaluation to develop an appropriate education plan for the student.

The PWN dated November 3, 2022 indicates the parent specifically requested sensory evaluation and the January 25, 2023 Evaluation/Eligibility Team Report lists this as one reason for the referral.

The PWN dated November 3, 2022 indicates the parent and school team agreed to evaluate how the student best learns and functions in the school setting.

The PWN dated November 3, 2022 was signed by the mother on November 3, 2022 providing consent to reevaluate the student.

The January 25, 2023 Evaluation/Eligibility Team Report shows that the mother completed the Vineland-3 Comprehensive parent/Caregiver Form on January 19, 2023.

The Score Profile for the Adaptive Behavior Composite shows the mother was respondent 2.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.303(b)(2) and K.S.A. 72-3428(h)(2)(B) the reevaluation process must occur once every three years or more often, if needed, to determine: 1. If the child continues to be a child with an exceptionality; 2. whether the child continues to need special education and related services; 3. the educational needs of the child; 4. the present levels of academic achievement and functional performance (related developmental needs) of the child; 5. and 6. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

In this case the IEP team had been unable to reach agreement on occupational therapy services, present levels of functional performance and the educational needs of the student. The student's IEP team, including the parent appropriately determined to conduct a reevaluation, as documented in the November 3, 2022 Prior Written Notice agreed upon areas requiring new data and what areas would rely on use of existing data. Additionally, the parent requested sensory and adaptive behavior evaluation and both the parents and district agreed to evaluate how the student learns. The January 25, 2023 Evaluation/Eligibility Team Report showed that the evaluation plan was followed.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to provide parent input into the reevaluation process.

> ISSUE FIVE: The USD #305, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a comprehensive evaluation that addresses the specific needs of the child during the past 12 months, specifically the Reevaluation dated January 25, 2023.

Positions of the Parties

The complainant alleged that while the evaluation was completed it did not address any of the functional needs that occur in the student's life such as toileting hygiene, shoe tying. The parents allege that the occupational therapy evaluation did not address the functional, independent living skills he needs.

The district acknowledged that a reevaluation of the student was just completed on January 25, 2023 and included all of the areas that were proposed on the November 3, 2022 Prior Written Notice outlining the proposed evaluation plan.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #305.

The findings of Issue One, Two, Three, and Four are incorporated herein by reference.

The Evaluation/Eligibility Report, dated January 25, 2023 shows the following:

PWN proposed areas of evaluation and data collection plan	Existing Data	New Data	January 25, 2023 Evaluation Report data provided
Vision	x		School screen - 10/4/2022
Hearing	x		School screen - 1/26/2022
Health/Motor	x	x	OT report by district OT (existing) OT observation (undated)
Social emotional/ Behavioral		x	Vineland-3 (11/22/2022 and 1/19/2023)
General intelligence	x		WISC-V dated January 5, 2021
Academic Performance	x	x	Writing samples, Woodcock-Johnson IV (1/2023)
Communication	x	x	Informal language assessment, conversation sample, observed during specials classes with typical peers
Adaptive		x	Adaptive Behavior Composite from the Vineland-3 (undated)
Sensory		x	Sensory Profile School Companion (undated)
Outside Evaluation		x	Not included in 11/3/2023 PWN, however reported by district and parents that it was part of mediation. Outside Occupational Therapy Report dated 1/11/2023 by Nikki Goertzen, MOTR/L

The district reports that the classroom operates as a resource room with focus on academics, either supporting general education instruction or individualizing instruction to students who are not achieving at grade level.

District staff at the October 27, 2022 IEP amendment meeting stated that shoe tying is not a part of the school curriculum when the parent asked for assistance.

The OT states that he has the manual dexterity and muscles to tie his shoes. He needs the practice and has some deficits in visual perception that make it challenging.

The parents continue to state that the writing and fine motor skills that are reported at school are not seen at home. For example the parent reported that the student could not put a stamp on a letter.

A video provided by the parents show the student unable to use scissors to cut a wrist band from a person's wrist.

A video provided by the parents show the student not pulling or twisting the lid from a plastic bowl. He stated his hands hurt too much to open the bowl.

The district states that the student's independent living skills do not impact his academic performance and are not an educational priority for his IEP.

The occupational therapy observations conclude that the student may require staff prompts and supervision to perform self-care tasks thoroughly.

The student's daily living skills were scored as very low range for home and school by the Adaptive Behavior Composite of the Vineland-3 in the January 25 Evaluation Report.

The parent and district agree that resources for shoe tying were provided to the parent.

The parents asked the OT to discuss the toileting and shoe tying resources at the 2022-2023 annual IEP meeting after the reevaluation in an email.

The January 25, 2023 Evaluation/Eligibility Team Report lists the reason for the re-evaluation "to determine student's need for occupational therapy and update other skill areas so that appropriate instruction can be determined."

The parent and district agree that they discussed toileting hygiene during the 2022-2023 school year and the district offered wet wipes and use of the nurse's office for toileting assistance.

The summary and conclusions for the January 25, 2023 Evaluation/Eligibility Team Report state,

> Re-evaluation was completed to determine if OT services are needed for the student to be able to continue his progress in the general education curriculum. While evaluating fine motor skills, other areas were also assessed as part of the

> evaluation. Intelligence was reviewed from the previous evaluation and is indicated to be in the low range with a FSIQ (full scale IQ) of 73. This indicates that overall learning will be slower for the student and he will need a modified curriculum as he continues through school. The student has previously been diagnosed with autism and continues to be eligible (sic) for special education services under this eligibility category. Continuing speech-language services is recommended at this time to target language skills including social language. The IEP team should consider decreasing or exiting OT services as the student's needs can be met through accommodations which can be delivered by special education and regular education staff without specialized OT instruction.

The January 25, 2023 Evaluation/Eligibility Team Report updates the primary exceptionality to autism with no secondary exceptionality. The History section of this report states, the student's "educational label was changed from Developmental Delay to Autism and Speech Language Impairment" in April 2021 as part of his educational re-evaluation.

The Draft IEP dated January 25, 2023 does not refer to the January 25, 2023 Evaluation/Eligibility Team Report. The staff stated that the Draft IEP is based on the recent evaluation, explaining that the IEP computer program does not reflect the update until finalized.

Applicable Regulations and Conclusions

According to K.A.R. 91-40-9 evaluation procedures must ensure that each evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs. As such, they shall include a variety of assessment tools and strategies to gather relevant functional and developmental information about the child, including information provided by the parent, information related to enabling the child to progress in the general curriculum and what the content of the child's IEP should be.

Based on a review of the planned evaluation described in the November 3, 2022 PWN and the evaluation conducted in the January 25, 2023 Evaluation/Eligibility Team Report it is found that the district did conduct a comprehensive evaluation that addresses the needs of the student.

At the time of the investigation the IEP was drafted, and another meeting scheduled to finalize the services and goals so the content of this IEP was not investigated. However, based on a review of the evaluation report it is found that the evaluation data from the Adaptive Behavior Composite from the Vineland-3 and parent input do identify needs in daily living skills and should be considered during the IEP meeting even though his classroom is prioritizing academic school work.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to provide parent input into the evaluation process.

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, Ph.D.

Donna Wickham, Complaint Investigator

Gwen P. Beegle, Ph.D.

Gwen Beegle, 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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No.305
Salina Public Schools: 23FC305-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on January 26, 2023, by the parents, on behalf of their child, The students. In the remainder of this decision, the parents will be referred to as "the parents," and the student will be referred to as "the student." An investigation of the complaint was undertaken by complaint investigators 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 allegations, was issued on March 1, 2023. That Complaint Report concluded that there were no violations of special education statutes and regulations.

Thereafter, the parents 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 appeal and supporting documents, 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.

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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

The parents' appeal begins with two preliminary statements:

First: "Shortly after delivery of the complaint report, CKCIE contacted the parent to indicate that all OT services will be removed from the student's IEP." This is not an issue in this complaint. Accordingly, the appeal committee will not address this statement.

Second: "We further have concerns about CKCIE violating our mediation agreement." This statement is also not an issue in this complaint, and will not be addressed by the appeal committee.

The following are concerns are issues in this complaint and they have been addressed by the appeal committee as follows:

Concern #1: The issue presented in the complaint was: "Information in the IEP is incorrect."

The parents' appeal says, "Nowhere in the report are factual inaccuracies addressed." It adds "Is there no law that prohibits inaccurate documentation?"

The extent to which information is accurate is often subject to differing viewpoints of the participants. For that reason, the federal regulations regarding special education describe a process, that is separate from the complaint process, to address questions of accuracy. That process is described in federal regulations 34 C.F.R. 300.618 through 300.621, which the Committee will attach to this decision. In short, the process for resolving complaints regarding the accuracy of information is to initiate a request to the district to amend education records due to alleged inaccurate or misleading information, and if that is not successful, to request a hearing in the manner specified in the Family Educational Rights and Privacy Act (FERPA).

This concern should have been addressed in the complaint report by declining to investigate this concern, with the explanation provided above. To not address this issue in the report was error, but the error did not affect the ultimate outcome of this issue because, even if the information cited in the complaint was inaccurate (and the committee makes no finding regarding alleged inaccuracies of information), inaccurate information is not a violation of special education laws and regulations, and is not subject to the special education complaint process.

Concern #2: The issue presented in the complaint was: The 02/01/2022 IEP, with a print date of 4/25/22 has no goal under "Adaptive Behavior/Daily Living.

This concern was addressed briefly in the report on page 22. However, the reference to the Adaptive Behavior composite from the January 25, 2023 evaluation report does not address how adaptive behavior and daily living was applied in the 2/1/22 IEP.

In their appeal, the parents correctly point out that the "Adaptive Behavior/Daily Living" portion of the 2/21/23 IEP states that the student has needs in this area that require special education and related services, and that those services include Positive Behavior Supports and Accommodations and Modifications.

The allegation is not that these services were not provided. Rather, the allegation is that there was no IEP goal related to Adaptive Behavior and Daily Living. Perhaps a goal should have been established in this area, but the law does not require a goal for every service offered through an IEP (See Federal Register, August 14, 2006, p. 46662, where the Office of Special Education Programs, an office within the U.S. Department of Education, clarifies that "The Act does not require goals to be written for each specific discipline…"

Moreover, the committee notes that the 1/26/23 IEP states that, "Based upon the most recent evaluation and ongoing data collection" the student does not have needs in the area of Adaptive Behavior/Daily Living that require special education or related services. Accordingly, the committee finds that the lack of a goal in this area in the 2/1/22 IEP did not have an adverse impact on the student's educational performance. For the reasons stated above, the committee concludes that omitting a goal in the IEP of this student in the area of "Adaptive Behavior/Daily Living" is not a violation of law.

Concern #3: The issue presented in the complaint was: Shoe tying.

In the statement of facts regarding this issue, the parents state that they made multiple requests for assistance for the student to learn to tie his shoes and put the assistance in the IEP, but the district verbally declined our request to add it to the IEP.

This issue was not directly addressed in the complaint report.

The committee notes that in a document, dated 10/27/22, titled Conference Summary IEP Team Considerations, there is an account of the IEP meeting that took place on 10/27/22. With regard to shoe tying, it says:

> (Parent) said that she is concerned that he has not learned to tie his shoes. Programs have been sent home and he is not making any gains. It was explained that shoe tying is not part of the curriculum or prevents him from learning. He needs practice and it would help if he would practice several times a day. (Student) has the skills needed to tie his shoes.

This note supports the parents' statement that they made a request for assistance to help the student learn to tie his shoes, that the support be put into the IEP, and that the request was verbally denied. The verbal denial, and accompanying verbal explanation is not a violation of law as long as it is accompanied with a Prior Written Notice (PWN) stating the request has been denied, and providing a written explanation for the denial. The accompanying PWN does not address the denial of the parents' request that the IEP include assistance to help the student learn to tie his shoes.

Accordingly, the committee concludes that the school district is in violation of 34 C.F.R. 300.503, which requires that a PWN be provided to parents anytime an IEP team refuses to make changes to an IEP requested by parents.

Concern #8: The issue presented in the complaint was: Lack of transparency/collaboration in testing/sharing results.

The initial complaint provides the following facts: The parents requested a copy of the results of an evaluation on 4/21/21. On 4/23/21 this request was denied because the information being sought was on copyrighted test protocols. On 11/1/22, the parents made a written request for the written results of the reevaluation testing to be provided to a Dr. Morris and that information was provided to Dr. Morris immediately upon the parents providing their signature to release the records.

The issue presented in the complaint was whether the district timely provided the results of the evaluation upon the parents' 4/21/21 request. The committee corresponded with the complaint investigators on this issue. The complaint investigators indicated they did not address this allegation in the report because they were only permitted to address allegations that occurred within the past year. The date the parents' request was denied (4/23/21) was more than one year from the date the

complaint was filed (1/26/23). This timeline precluded the investigators from addressing this issue in the complaint.

While the committee believes the investigators should have advised both parties that this allegation would not be investigated, the committee also agrees that the investigators did not have jurisdiction to include this allegation in their investigation. Accordingly, the committee concludes that it also does not have jurisdiction over this issue and cannot, therefore, make any conclusions regarding whether a violation occurred based on the facts of this concern.

Concern #9: The issue presented in the complaint was: Incorrect IEP sent home.

The facts stated in the complaint to support this allegation were that an IEP was put in the student's backpack on 9/21/22 and apparently this IEP contained incorrect information indicating a reduction in services. In correspondence with the investigators, they stated that they did not address this concern in the report because it was mere error. That is, a mistake was made by either a teacher or the Occupational Therapist, or both. The parent caught the error, refuted it and it was corrected.

Again, the committee believes that the investigators should have advised both parties that they were not going to address this concern in the investigation. However, the committee agrees that the allegation, standing on its own, does not allege a violation of any legal requirement of special education. Therefore, the committee concludes that a violation of law did not occur under these facts.

Concern #10: The issue presented in the complaint was: Incorrect information to parents about signing complaint.

Under the title "What are the facts?," the parents state that, on 2/21/22, the student's classroom teacher told the father that the IEP must be signed by the due date, or the student would be placed into a regular classroom. In a panic, the student's father signed the paperwork.

The investigators told the committee that they did not address this concern in the complaint report because there was no written documentation to validate the different statements made by both parties. They concluded it was a matter of judgment as to

which party gave a more accurate description of events, and they determined that the description provided by district officials was likely more accurate.

The committee understands that in some instances where there is no writing to support an allegation, an investigator must make a credibility judgement. In general, an appeal committee will usually sustain a credibility judgement made by an investigator, unless the facts of the case clearly do not support that judgement.

In this case, the appeal committee believes that the weight of the evidence does not support the parents' allegation. In the notes of the 2/1/22 IEP meeting, titled "Conference Summary IEP Team Considerations," there is no mention of a proposal to change the placement of this student. There is, however, a long paragraph dealing with the IEP team's proposal to change OT services to a consultation model. That paragraph notes that Kristin Prophet, OTR/L recommended this change and added that it would be a material change in services that would require parent consent. These notes, referring to the parents, state:

> "If they do not want to give permission, the No should be checked and they should sign the placement page denying consent. She let them know that if they choose not to agree to consultation that she would be decrease OT time by less than 25% so that (the student) would receive 18 minutes of OT services 1 time a week in his special education classroom. This is recommended by the school team as (the student) has the fine motor skills to participate in classroom instruction."

This is another instance in which the committee believes the investigators should have included this concern in their report and explain why they did not substantiate the allegation. However, the committee concludes that this allegation is not substantiated for two reasons: (1) the investigators report that they were not able to confirm the parents' allegation that they were told to sign the IEP or their child would be put into a regular classroom; (2) a complaint must allege that a violation of law has occurred, not that a district has said it would do something that would potentially violate the law. In other words, to proceed with a complaint, the violation must have actually occurred. Here, if the school district had actually placed the student in an environment inconsistent with the student's IEP for more than 25% of the school day, without the parents' consent, there would be a violation of law. That did not occur.

At this point in the parents' appeal, the parents address some concerns they have with the report itself, as follows:

Report concern #2

On page 6 of the report, the investigator says, "The district describes another instance with the January 25, 2023 Notice of Meeting document that inaccurately indicated that the Notice of Meeting was hand delivered, when in fact it was delivered by the mediator."

In the appeal, the parents state that "NO Notice of Meeting form was delivered to us. The November 22, 2022 Notice of Meeting form that was indicated is also curiously missing from the list of documents provided by USD 305/CKCIE."

The committee has obtained a copy of the Notice for the 1/25/23 meeting. There are no signatures indicating the notice was received. However, under the title "Documentation of Delivery," the notice shows two separate deliveries. One by the IEP team – hand delivered on 11/22/22 and another sent by mail on 1/9/23 by Lynette Lorenson. Based on this written documentation, the committee concludes that there is sufficient documentation to support the investigator's finding that the notice was delivered.

Report concern #3, on page 8 and 9:

The report says: "Further, their evaluation shows that the student is functioning adequately at school and does not interfere with his educational participation."

The parents state they believe this statement to be a lie and believe the teacher "has been intimidated into silence on the topic."

However, the parents do not provide any support for this view. This appears to be a matter of opinion. In the Conference Summary IEP Team Consideration for the meeting held on 10/27/22, this issue is addressed in the "Description of Conference Discussion." There it is noted that the student's mother stated she did not believe the information in the IEP was accurate because she believed that the student's bathroom activities were not age appropriate, including washing his hands and wiping himself. However, Kristin Prophet expressed a different view, stating that the student "has a full range of motion for these tasks" and, although he needs prompts to remember to complete the steps of these tasks, "he can do them."

The committee finds that the investigator based her decision that the student is functioning adequately at school and that any difficulty completing bathroom tasks does not interfere with his educational participation, on information provided by school personnel and information obtained from the previous evaluation of the student. Accordingly, the committee will not disturb this finding.

Report concern #5 continued lack of communication

The report, on page, 9, says: "The district reports that they continued providing 30 minutes of direct occupational therapy service weekly for the remainder of the 2021-2022 school year to provide the student and family with consistency."

In this report concern, the parents state that this information was never communicated to them. The committee sees a concern here greater than a failure to communicate. According to this finding, a PWN, dated April 29, 2022, proposed reducing occupational therapy (OT) for the student to 23 minutes, which did not require parent consent. However, the district stated to the investigators, and the OT records confirmed that OT services continued at 30 minutes of direct services through the end of the 2021-2022 school year. This may have been done for a good reason (consistency), but the district was not free to deviate from the student's IEP. Federal regulations, at 34 C.F.R. 300.323(c)(2) and 300.17 with 300.101 require school districts to provide special education and related services in conformance with a student's IEP. In this instance, by its own reporting, the district failed to do that. Accordingly, the committee finds that a violation of law has occurred with regard to this issue.

Broad concerns regarding Report of Complaint

The parents state that they have not received a copy of the COTA logs indicated in the Conference Summary and IEP team considerations on October 27, 2022 documents provided by USD 305/CKCIE for this complaint. That, along with the district's response to this complaint will be addressed in the corrective action portion of this decision.

List of specific concerns regarding Report of Complaint.

Report concern #1

The parent cites the report, on page 6, saying there was one known instance in which the district did not provide a 10-day notice, and then, when the parents refused to waive their right to the 10-day notice, the district halted the meeting and rescheduled for a

later date. In this appeal, the parents ask why that finding was made, asking "Because we made them stop, it means the district is compliant?"

In order to hold an IEP meeting, a district must provide at least a 10-day advance written notice, unless the parent waives the right to that notice. It is not a violation of this regulation for a district to schedule a meeting for less than 10 days out and ask the parents if they would be willing to waive the 10-day portion of the notice. There is nothing in the regulations that prohibits this kind of practice. Had the district scheduled the meeting less than 10 days in advance and proceeded to hold the meeting without the requested waiver, the district would have failed to comply with this requirement. That did not happen.

As part of this concern, the parents appeal also addresses their understanding that the district told them they would continue to provide amendments every 9 weeks until it reduced the students OT services to consult. Once again, a statement of district personnel that something inconsistent with law might occur does not, by itself, result in a violation of law. The district did not reduce OT services every nine weeks.

As part of this concern, the parents also state that the continuation of OT services at a greater rate than specified in the IEP was never communicated to them. This issue is addressed in this decision in Report concern #5 continued lack of communication, and corrective action will be required.

Report concern #6: Outright lies

In this portion of the appeal, the parents state that the statement in the complaint report on page 11, that "During the interview the district reported that they agreed to not reduce the service as the parent requested mediation for occupational therapy services." This is not a statement of fact. Here, the investigator is stating that this was reported to the investigator during the interview. While the report made by the district may, or may not, have been incorrect, there is no evidence that the report was not made to the investigator. Moreover, in this appeal, the parents provide the committee with no evidence that this statement was less than factual or even the relevance of the statement to the issue being investigated.

Conducting this kind of investigation often requires judgement as to the credibility of those being interviewed. The investigator actually speaks with the parties and is in a superior position to the committee when exercising such judgment. Therefore, the committee makes no finding on this issue.

Cursive, accommodations, challenging math goals.

In this portion of the appeal the parents question how ESY was eliminated in the original IEP, but reinstated when the parents objected, and failed to mention this in documentation given to the investigator.

The parents, however, do not give a date for when this occurred. Presumably, because it was eliminated from the original IEP, it occurred more than one year ago and so it not something the appeal committee can address.

Report concern #7: District continues to harass us.

The parents indicate they are repeatedly "threatened" to remove services. This may be the parents' perception, but there has been no documentation of any reduction in services for this student that was done without the necessary consent. The committee concludes that the parents have not substantiated a violation of law on this issue.

Report concern #8

The parents cite the complaint report, on page 21:Issue 5 as follows: "District staff at the October 27, 2022 IEP amendment meeting stated that shoe tying is not a part of the school curriculum when the parent asked for assistance." The parent follows with "As a parent, when we ask for an IEP goal, are we supposed to be told "no" by the district?" This issue is addressed in the committee's final comment to this appeal.

Report concern #9

The parents cite a comment made by the investigator on page 24, Issue 5, as follows: "Based on a review of the planned evaluation described in the November 3, 2022 PWN and the evaluation conducted in the January 25, 2023 Evaluation/Eligibility Team Report it is found that the district did conduct a comprehensive evaluation that addresses the needs of the student."

The parents' statement with this citation is that "The school ONLY conducted evaluations at the request because we asked for it. They proposed service elimination multiple times before conducting full evaluations. Is this acceptable? Compliant with the spirit of our special education laws?"

The issue presented in the complaint was whether the district conducted a comprehensive evaluation that addresses the specific needs of the student, specifically

the reevaluation dated January 25, 2003. The committee finds that the investigators based their decision on relevant facts and that the conclusions of the investigator on this issue are supported by those facts.

As a final comment, the committee notes that the first full paragraph in the parents' appeal states:

"We are glad the complaint investigator thoroughly looked at the paper trail, but feel that the team missed the heart of our complaint: mainly that USD 305/CKCIE does not add items that we as parents request to the IEP and that they repeatedly ignore our wishes for services."

The committee agrees with the parent that the heart of their complaint is that the IEP team sometimes does not add items to the IEP that are requested by the parent. The committee, however, disagrees that the team repeatedly ignores the parents' wishes for services. As the committee reviewed the "Conference Summary IEP Team Considerations" document, dated 10/27/22, it appeared to be notes on the discussion that occurred at the 10/27/22 IEP meeting. Those notes included:

- Parent shared that she was having medical issues and may ask a lot of questions and asks for patience.
- Parent clarified that this was an IEP amendment meeting, not an annual IEP meeting.
- Parent expressed concern about consistency for the student and his need for things to be kept the same.
- Parent stated she would like the student to have OT services so the student can learn to write on a smaller line.
- Parent stated the student needs prompts to continue to work on motor skills and keyboarding.
- Parent stated that she does not feel like the information in the IEP is accurate.
- Parent stated that she is concerned that the student has not learned to tie his shoes.

To each of these inquires, the notes indicate that all of the parents' concerns were discussed and explanations given. As the committee reviewed this document, it was apparent that the IEP team addressed each of the issues presented by the parents, and did not ignore the parents.

Parents have a right to meaningful participation in IEP meetings [34 C.F.R. 300.322] and IEP teams have an obligation to consider the concerns of the parents [34 C.F.R. 300.324], but decisions are made by the IEP team. Of course, reasonable minds can

disagree. When an IEP team refuses to adopt a parent's proposal, that does not, by itself, mean the parents did not have meaningful participation nor that the IEP team failed to consider the concerns of the parents.

CONCLUSION

The Appeal Committee concludes that the complaint report did not address multiple issues presented by the parents in their initial complaint. That was error, although as explained above, in all instances the evidence does not support a violation of law except for concern #3. The committee concludes that because the PWN presented at the 10/27/22 IEP meeting did not include the required information for refusing the parents' request for "shoe tying" assistance to be added to the IEP, the school district is in violation of 34 C.F.R. 300.503. That regulation requires that a PWN be provided to parents anytime an IEP team refuses to make changes to an IEP requested by parents.

In addition, Federal regulations, at 34 C.F.R. 300.323(c)(2) and 300.17 with 300.101 require school districts to provide special education and related services in conformance with a student's IEP. The district failed to provide services in conformance with this student's IEP when, with a PWN dated April 29, 2022, it reduced the student's OT services from 30 minutes to 23 minutes, but continued to provide 30 minutes of service.

Therefore, the committee orders the district to take the following corrective actions:

1. Within 15 days of the date of this decision, schedule an IEP meeting to reconsider putting supports in the IEP to help this student learn to tie his shoes.
2. If the parents agree to attend the scheduled meeting, within five days after the meeting, the team shall make a determination as to whether to add shoe tying assistance to the student's IEP and shall provide the parents with a properly completed PWN stating whether shoe tying assistance will be added to the IEP, including an explanation as to why the decision was made.
3. Within 15 days of the date of this decision, the district shall draft a written message regarding the legal requirement to: (a) respond to any request of a parent to add or remove a service to the IEP with a PWN; and (b) to provide services in conformance with the IEPs of its students. Within the timeline specified in this paragraph, the district shall disseminate that message to all special education personnel at Heusner Elementary School, and provide a copy of that message to SETS.

4. The district shall notify Special Education and Title Services (SETS) when each of above actions have been completed, including whether the parents agree to attend the IEP meeting required in corrective action 1, and provide a copy to SETS.
5. Within 15 days of the date of this decision, the district shall provide the parents a copy of the COTA logs indicated in the Conference Summary and IEP team considerations on October 27, 2022 documents provided by USD 305/CKCIE to the investigator for this complaint, and notify SETS when that has been accomplished.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 4th day of April, 2023.

APPEAL COMMITTEE:

Crista Grimwood

Brian Dempsey

Ashley Niedzwiecki

Federal Regulations regarding a challenge to the accuracy of special education records.

Sec. 300.618 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619.

Sec. 300.619 Opportunity for a hearing :

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Sec. 300.620 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must--

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

Sec. 300.621 Hearing procedures.

A hearing held under Sec. 300.619 must be conducted according to the procedures in 34 CFR 99.22.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
Clay County Unified School District #379

DATE OF REPORT: March 3, 2023

This report is in response to a complaint filed with our office by the parent, parent of son, the student. Xxxxxxxx will be referred to as "the student" in the remainder of report. The parent will be referred to as "the parent."

Investigation of Complaint

The investigators reviewed the complaint submitted on behalf of the student and reviewed the written response of the district. The district's response was sent by e-mail on February 10, 2023, by Anita Breen, Director of Special Education at Twin Lakes Educational Cooperative.

Background Information

The relevant facts in this case are as follows:

1. The student is enrolled in Clay County Public Schools USD # 379 for the current school year. (2022/2023 school year)
2. February 2019, student was found eligible for special education as a 3-year-old.
3. The student's primary exceptionality is categorized as a Developmental Delay in Social and Emotional Development.
4. August 8, 2022, the student transferred into Clay County Public Schools #379 from Geary County USD #475.
5. During the first week of school, the Clay County IEP team met, including the parent, and at that meeting it was determined attendant care and special education transportation should be removed from the student's IEP. No reason for removal of attendant care was noted on the PWN.
    a.) In an e-mail response for clarification on the decision, the district stated that the "student did not exhibit behaviors that indicated a need for that" (attendant care), during "the first week of school".

6. September 20, 2022, the IEP team again met and determined an increase in pull-out special education services and a Behavior Intervention Plan should be implemented.
7. No official Notice of Meeting was sent for this meeting, but records indicate e-mail exchanges occurred prior to the meeting between the district and the parent regarding the upcoming meeting, its time/date, and concerns to be addressed. (September 9th and 16th).
8. The results of that meeting include the following:

1. b.) 430 minutes in the Special Education Room
2. c.) 20 minutes 1x week with psychological services
3. d.) 30 minutes 5x week for social skills instruction
4. e.) Behavior Plan with leveled structure to earn time back in the general education classroom.
5. f.) Social work services increase was considered but denied due to provider availability.
6. g.) was considered but denied due to safety concerns.
7. h.) More Restrictive Environment considered but rejected due to legal/ethical standards.
8. October 17, 2022, the district proposed a special education reevaluation to acquire new data after the parent requested an FBA. A PWN was sent to the parent which included:
    a.) The district's request for consent for Project Stay to observe and contribute to student's behavior intervention plan.
    b.) A statement that not assessing the student was considered but rejected because that would not comply with state and federal guidelines.
    c.) The district's request for consent for the assessment and resulting collection of behavioral and/or social-emotional data to determine the student's current needs.
9. October 19, 2022, the parent signed the PWN, consenting to the reevaluation.
10. November 8, 2022, following a suspension which began on November 7, 2022, the district completed a manifestation determination review (MDR) and determined that the student's behaviors were NOT a manifestation of the student's disability. Included in the MDR were the following:
    a.) The November 7, 2022, incident, which led to the suspension, was behavior that the district found "represents a pattern of behavior".
    b.) The student's behavior, which resulted in the suspension, included "aggressive behaviors in the general education and special education

classroom including but not limited to: hitting, kicking, throwing rocks, eloping, yelling, cussing, verbal threats, destruction of property".

c.) The student had a "history of disruptive/aggressive behaviors for attention-seeking and in desire to control play".

d.) The student was making slow progress toward goals.

e.) The student had a record of numerous behaviors that subjected the student to disciplinary action within the school year, consisting of 9 entries which resulted in no less than 16 days of in-school suspension (ISS) and out-of-school suspension (OSS), beginning on 9/1/2022 until the incident on 11/07/2022.

11. In an e-mail response for clarification as to the decision not to hold additional MDR's after subsequent suspensions, the district stated that, "the student's later incidents followed that pattern" [pattern of behavior the district found in the MDR conducted on 11/7/2022], and therefore the district was under the "good-faith impression" that further MDRs were not needed because they found a pattern.

12. November 28, 2022, the IEP team met to review the data collected from the Functional Behavior Assessment and the following information was discussed:

a.) The student was performing academically at an age-appropriate level but did continue to exhibit a need in social-emotional supports.

b.) Possibly adding time to the end of the day instead of the beginning so that the student could stay in class rather than come and go.

1. Level 1 will be 2:55 p.m.
2. Level 2 will be 2:40 p.m.

c.) Team discussed the student being able to "stay" at his current level (per the BIP) even if he struggles the previous day. The team agreed unless the student "is unsafe to his classmates during this time".

d.) The team discussed allowing the student to attend the last 15 minutes of the day "as long as his body is calm". What this looks like to be reviewed with Mrs. Laffery.

e.) An adult will come with the student during the general education classroom time.

13. January 9, 2023, IEP meeting was held and a BIP was altered and updated.
14. E-mails, following the 1/9/2023 IEP meeting, between the district and the parent indicating that the parent would like to remove the current IEP and BIP and start over.
15. January 24, 2023, PWN issued refusing to create a new BIP with the reasoning that the current document can be "changed as needed."

a.) Emails between school and parent discussing the recent changes to the BIP and that time is needed to determine if the interventions are successful or not.

16. E-mails exchanged between the district and the parent indicating when and how the district would provide special education services to the student when the student was in ISS or OSS, including providing the student with technology if the parent was agreeable.

Issues

In the complaint, the parent raises the following issues:

Issue One: The parent reports that the Behavior Intervention plan is not appropriately written to meet the social and emotional needs of the student.

Issue Two: The parent reports that the student is being denied access to his same aged peers, non-academic activities, and field trips due to the student's disability.

Issue Three: The parent reports that the student is not being educated in the Least Restrictive Environment.

Issue Four: The parent reports that special education services were not provided after the Manifestation Determination Review.

Analysis

Issue One: The parent reports that the Behavior Intervention plan is not appropriately written to meet the social and emotional needs of the student.

This first issue is essentially whether the student was provided with a Free Appropriate Public Education (FAPE) based on the student's Behavior Intervention Plan and IEP.

The term "free appropriate public education" (FAPE) includes special education and related services that are provided at no cost to the parent and in conformity with an individual education program. (K.A.R. 91-40-1(z)). A two-part analysis was established in Rowley, 458 U.S. 176 (1982), to determine whether FAPE has been provided to a student. Endrew F. v. Douglas County School District, 117 LRP 9767 (S.C. 2017), further

refined the legal standard to mean that a school "must offer an IEP reasonably calculated to enable a child to make progress appropriate in the light of the child's circumstances", and a subsequent amendment to the statute clarified the process used by hearing officers when determining whether a procedural violation denies a student FAPE.

The first part of the Rowley analysis asks whether all procedural requirements of IDEA have been met, and if not, did those procedural violations result in a denial of FAPE, which occurs only if the violation "a) impeded the child's right to FAPE, b) significantly impeded the parents' opportunity to participate in the decision-making process, or c) caused a deprivation of education benefits". (20 U.S.C. 1415(f)(3)(E)).

a) Were there any procedural violations regarding the IEP/BIP, and if so, did those violations fail to provide the student with FAPE?

In this situation, we find two procedural violations regarding the implementation of the IEP and BIP. We also find that these procedural violations did not fail to provide the student with FAPE for the following reasons.

Procedural Violation #1 – Failure to provide a Notice of Meeting for the meeting conducted on September 20, 2022.

Under, K.A.R. 91-40-17(a)(2), a school is required to provide parents with a written notice of any IEP meeting. This notice has specific content requirements and must be provided in writing at least 10 calendar days prior to the meeting. By its own admission, the district failed to provide this notice of meeting to the parent prior to the September 20, 2022, IEP meeting. This is a violation under state law.

In this case, the evidence presented shows that although the district did fail to provide a notice of meeting, the district and the parent were in regular contact regarding the upcoming meeting. Part of the point of a notice of meeting is to ensure that all concerns will be addressed and a mutually agreed upon meeting time is set. E-mails exchanged on September 9th and 16th do address what proposed changes to the student's IEP would be considered and a mutually convenient time for the meeting explored. Due to this e-mail communication, the parent was not significantly impeded of the opportunity to participate in decision-making, the student was not impeded the student's right to FAPE, and the student was not deprived of educational benefits. While we stress that this communication is not an appropriate replacement of a notice of meeting that meets

the requirements of K.A.R. 91-40-17(a)(2), and the failure to provide a proper notice of meeting is a violation, we do not find that the violation created a denial of FAPE.

Procedural Violation #2 - Failure to provide a sufficient reason as to why the student would not receive additional social work time in the IEP amendment dated September 20, 2022.

State and federal laws and regulations require that educational placement decisions be made by the IEP team, based on the child's individual needs in accordance with LRE provisions. (34 C.F.R. 300.116; 34 C.F.R. 300.320; K.A.R. 91-40-21). When the IEP team considers a related service option, the team may decide that the related service is, or is not, needed. If the option is rejected, the education agency is required to provide a description of "other options the agency considered and the reasons why those options were rejected". (K.S.A. §72-3432(c); K.A.R. §91-40-26(a)(1); 34 C.F.R §300.503(b)(6)). OSEP has stated that "in all cases placement decisions must be individually determined, based on the child's IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience". Federal Registrar, 46588.

During the September 20, 2022, amendment meeting, the team considered increasing the student's social work minutes from two times a week for 20 minutes each, to three times a week for 20 minutes each. However, in the IEP, the district noted that, "adding additional social work time was also considered, but was unable to be added due to provider availability". Lack of availability of staff and services is not an acceptable reason for not providing the services under the law, therefore, this is a violation of the requirement to adequately state why a service option has been rejected.

However, in lieu of social work services, the IEP team agreed to provide 20 minutes, once per week of school psychological services. While it is true that social work and school psychological services can be vastly different, in this situation, and based on this student's goals, which center on learning how to emotionally regulate, as well as clarifying e-mails from the district as to the skills each provider is teaching, we find that the services provided by the school psychological services will support the student toward achieving the student's IEP goals. Additionally, the parent was part of the IEP team meeting and did provide consent for school psychological services. Therefore, because 1) the parent was able to participate in the decision-making process, 2) the failure to explain, in a PWN, why the student would not receive additional social work services, did not impede the provision of FAPE for the student, nor 3) was there any

deprivation of education benefits, we find that this violation did not result in a failure to provide FAPE to the student.

b) Was the BIP appropriately written to provide the student FAPE?

The second part of the Rowley analysis asks whether the IEP is reasonably calculated to provide some educational benefit to the student. In considering the second part of Rowley, we note that in Endrew F. v. Douglas County School District, 137 S.Ct. 988 (2017), the United States Supreme Court revised this part of the Rowley decision to ask whether the IEP is reasonably calculated to enable a student to make appropriate progress in light of the student's unique circumstances. We find that the IEP/BIP was appropriately written to provide the student with FAPE for the following reasons.

Kansas regulations define FAPE, in relevant part, as "special education and related services that are provided in conformity with an individualized education program". (K.A.R. 91-40-1(z)(4)). Kansas further defines an IEP as "a written statement for each exceptional child that meets the requirements of K.S.A. 72-987, and amendments thereto, and the following criteria: (1) Describes the unique educational needs of the child and the manner in which those needs are to be met; and (2) is developed, reviewed, and revised in accordance with applicable laws and regulations". (K.A.R. 91-40-1(gg)). When developing a student's IEP, the team shall consider, inter alia, that a student's IEP be based on the strengths of the child, the concerns of the parents, the academic, behavioral, and functional needs of the child, and, in the case of a student whose behavior impedes their learning or the learning of others, "the use of positive behavioral interventions and supports and other strategies to address that behavior". (K.S.A. 72-987(d)(1)-(4)).

In this case, the parent alleges that the student's current IEP/BIP are not appropriately written and that the team should start over and create an entirely new IEP/BIP for the student. In review of the documents, we found that the IEP team, including the parent, met several times over the course of the academic year. Together the team, with consent and participation of the parent, adjusted and aligned the IEP and BIP based on the student's individual needs and implemented a behavioral intervention plan consisting of supports and other strategies to address the student's behavior. The student's IEP, and subsequent amendments, show that appropriate data was collected and considered, specifically parent reports, previous IEP data, progress monitoring, behavioral and incident disciplinary data, and that the student was making, as noted by the district, some, albeit small, advancements toward IEP goals.

Therefore, at this time, we find that the IEP and BIP were written considering the unique educational needs of the child and in the manner in which those needs should be met. Further we find no indication that the current IEP and BIP are not providing appropriate educational benefit to this student, in light of this student's individual circumstances. Therefore, we do not find a violation of FAPE based on the current IEP/BIP.

Regarding the parent request to start over with a new IEP/BIP, we find that there is no violation. On January 9, 2023, the IEP team, including the parent, held the annual review of the student's IEP. On January 12, 2023, the parent requested that the team "start from scratch" and develop a new IEP and BIP. In an e-mail dated January 18, 2023, the district responded to the parent's requests for a new IEP/BIP and let the parent know that they would consider this. However, the district also noted that between the last changes to the IEP/BIP and the IEP team meeting, held on January 9th, that only 19.5 school days had elapsed, of which the student was present for 17 days. The district noted that this was a limited time to gather data. Following this correspondence, the district appropriately provided the parent with a PWN explaining that the BIP, which is part of the IEP, can and is being amended as the IEP team feels necessary and was therefore denying the parent's request.

In light of our finding of no violation of FAPE based on the current IEP/BIP, and given that at the time of the parent's request for a new IEP/BIP, the current amendment was only in place for approximately one month, and also because the district appropriately provided a PWN explaining the rejection of the parent's request, we do *not* find that the school violated any provision of IDEA by refusing to "start from scratch" with an entirely new IEP and BIP.

> Issue Two: The parent reports that the student is being denied access to same aged peers, non-academic activities, and field trips due to the student's disability.

The next issue alleged by the parent is that the student was not permitted to access same-aged peers in non-academic activities and field trips resulting in a violation of law under IDEA. We find no violations for the following reasons.

According to K.A.R. 91-40-3(b)(1), an agency shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, including the provision of supplementary aids and services as determined to be necessary by the child's IEP team. Under K.S.A. 72-3429(c)(5), an IEP shall include an

explanation of the extent, if any, to which a child will not participate with nonexceptional children in the regular class and in activities.

In this case, the IEP team, including the parent, determined that the student would participate in activities so long as the child was regulated in a manner noted in the student's IEP and BIP. The IEP states, the [student] "will not be educated or participate with [the student's] general education peers through the duration of the school day unless otherwise specified and in accordance with his behavior plan." The BIP permits the student to earn time in the general education setting based on the student's ability to regulate [the student's] emotions and provides for a certain amount of time in the general education setting at the end of each day.

Documentation shows that attempts to include the student in activities were made on various occasions when the student was regulated. E-mails, incident reports and data also show that when the student was regulated, the student did participate in activities such as music and gym. However, the manner in which the student was able to participate was altered based on the student's IEP and the student's unique needs. For example, the student participated in music, with general education peers during a drumming session, but was not able to utilize the drum sticks due to the student using them for destructive purposes. As a side note, the district also stated that on one occasion the student was permitted to participate with preschoolers during gym, we stress that this is NOT an activity with same aged peers and does not count as inclusion with same-aged peers. However, because the student also did participate in nonacademic activities, to the extent described in the student's IEP, with same-aged peers, and in the manner in which the student was able, we find *no* violation.

> Issue Three: The parent reports that the student is not being educated in the Least Restrictive Environment.

The third issue is whether the student was educated in the least restrictive environment in light of the student's circumstances. We find no violation of LRE for the following reasons.

Educational placement is a team decision. As such, and under K.A.R. 91-40-21(c)(1)(A), when determining the placement of a child with a disability, each agency shall ensure that placement decisions meet certain criteria, which requires that the decisions are made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement

options. Furthermore, schools must educate children in the "least restrictive environment" referring to the educational placement in which, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. (K.A.R. 91-40-1(ll)). A child should only be removed from the general education environment if the severity of the disability is such that education in the general education environment, with the use of supplementary aids and services or modifications, cannot be achieved satisfactorily. (K.S.A. 72-3420(a)). An IEP must contain an explanation of the extent, if any, to which a student will not participate with students without disabilities in the general education classroom and in extracurricular and nonacademic activities. (K.S.A. 72-3429(c)(5)).

In this case, the IEP team met, including the parent, on several occasions, to discuss the appropriate educational environment for the student based on continued behavior concerns occurring inside and outside the general education classroom. On September 20, 2022, the team decided, with consent from the parent, to increase pullout time and implement a BIP based on the behaviors that the student was exhibiting. As stated above, the student's IEP/BIP was subsequently adjusted, with consent and input from the parent, including the student's participation with general education peers. Furthermore, documents indicate that between September 20, 2022, and January 9, 2023, the student's behaviors continued to be a concern, and included, destruction of property, eloping, injury to staff and other student, verbal assaults, and significant disruption of instruction in the general education classroom. Documents also show that, in this situation, the student's behaviors were impeding the learning of self and others in the general education setting. As noted above, the student's IEP and BIP provided an explanation as to what extent the student would participate with general education peers and in what setting. Therefore, because placement decisions were made by the team, with consent from the parent, and because documentation shows that the student was being educated based on the individual needs of the student, and in consideration of the impediment the student's behaviors had on the learning of self and others, we find *no* LRE violation.

> Issue Four: The parent reports that special education services were not provided after the Manifestation Determination Review.

Finally, we considered whether, following the manifestation determination review conducted on November 8, 2022, the student received the appropriate special

education services. We find that the student did receive appropriate services and therefore do not find a violation for the following reasons.

A manifestation determination (MDR) is a review done to determine whether the student's behavior, resulting in discipline, is a manifestation of the student's disability. An MDR may be done, but is not required, after discipline resulting in a removal, if the short-term removals do not cumulate in more than 10 consecutive days, or the short-term removals, do cumulate in more than 10 days, but do not constitute a change in placement and there is NOT a pattern of removals constituting a change in placement. (34 C.F.R 300.530(b)). In such a case, the school will determine services for the student. (34 C.F.R. 300.530(d)(4); K.A.R. 91-40-33(b); K.A.R. 91-40-36(a)).

However, when a student, with an exceptionality, is removed for more than 10 consecutive days, or shorter removals cumulate to more than 10 days AND a pattern of removal constituting a change in placement occurs, an MDR must be done. (34 C.F.R. 300.536(a)(1)(2); 34 C.F.R 300.530(c)). In such a case, when the behavior subject to disciplinary action is not a manifestation of the student's disability, the IEP team shall determine services and the place where the services will be provided. (34 C.F.R. 300.530(d)(5); 34 C.F.R 300.531). Parental consent is not required for this change in placement in this situation. (K.A.R. 91-40-27(a)(3)).

In either situation, when a student has reached the 11th cumulative day of suspension in a school-year, services must be provided that enable the child to 1) participate in the general education curriculum, and 2) progress toward meeting the goals set in the IEP. (34 C.F.R. 300.530(d)(4)).

Regarding whether the student appropriately received services following the MDR, we find that the student did. Documents show that after the MDR, the student was receiving general education instruction via zoom during in-school suspension (ISS) and during out-of-school suspension (OSS). E-mail communication dated November 7th indicates that the district sent homework for the student to complete while in OSS and continued to provide special education services through zoom. Further the district offered the student an iPad for at-home use to facilitate the student's progress toward IEP goals. Findings also show that the district made up minutes the student lost on two separate occasions due to ISS or OSS. Interviews and documents further show that, in some cases, while services were provided the student chose not to participate. For example, the student would sometimes not present for scheduled zoom time while in OSS or would sometimes refuse to actively participate with teachers. In additional email communications, occurring post-MDR, it was revealed that the district provided the

student with services, offered schedules for services, and provided lessons for the days in which the student would be in OSS. Therefore, given that documentation shows that the district determined what services the student would receive, when, and how the student would receive services, and provided general education lessons, following the MDR, in which the student's behavior was not considered a manifestation of his disability, we find that the student did not lack special education services and there is no violation.

We would note however, that while we find no violation as to services provided after the MDR, the district did conduct its first, and only, (up to this point), MDR on November 8, 2022. According to a list of incidents and resulting discipline, included in the MDR, the manifestation review was completed after the student's 16th cumulative day of ISS and OSS. During this review the district found that the student's behavior was not a manifestation of the student's disability.

While it is true that a district does have discretion as to when removals become a pattern (even those removals that have accumulated in more than 10 cumulative days suspension), and a district is not obligated to complete an MDR just because a student has accumulated more than 10 days of suspension, unless a pattern has been found, it is prudent for any district to consider the factors under K.A.R. 91-40-33(a)(1). These factors give guidance as to when short-term suspensions constitute a change in placement.

In this case, we note that the district documented, on the MDR, that the student had a "history of disruptive/aggressive behaviors" and marked that the behavior (occurring Nov. 7th), which resulted in the discipline, was represented by a "Pattern of Behavior", yet the district found that the student's behavior was not a manifestation of the student's disability. At this time, we reserve judgment on whether the MDR should have been conducted sooner, based on a possible "pattern of behavior", or whether the MDR should have found that the student's behavior was a manifestation of the student's disability, as these questions are outside the scope of this investigation and this particular issue.

In summary, there is *no* violation as to services provided after the MDR was done.

Conclusion

1. The allegation of a violation of federal and/or Kansas special education laws or regulations that the Behavior Intervention plan is not appropriately written to meet

the social and emotional needs of the student, thus failing to provide FAPE, is not substantiated.

a) Procedural violations of federal and/or Kansas special education laws or regulations regarding failure to provide a Notice of Meeting is substantiated.

b) Procedural violations of federal and/or Kansas special education laws or regulations regarding failure to provide an appropriate reason for not providing a special education service or supportive service the IEP team deemed necessary is substantiated.

2. The allegation of a violation of federal and/or Kansas special education laws or regulations that the student was denied access to the same aged peers, non-academic activities, and field trips due to the student's disability is not substantiated.
3. The allegation of a violation of federal and/or Kansas special education laws or regulations that the student is not being educated in the Least Restrictive Environment is not substantiated.
4. The allegation of a violation of federal and/or Kansas special education laws or regulations that special education services were not provided after the Manifestation Determination Review is not substantiated.

Corrective Action

Information gathered during this investigation has substantiated procedural noncompliance with special educational statutes and regulations. Violation(s) have occurred in the following areas:

Procedural Violation #1 – Failure to provide a Notice of Meeting for the meeting conducted on September 20, 2022.

Under, K.A.R. 91-40-17(a)(2), a school is required to provide parents with a written notice of any IEP meeting. This notice has specific content requirements and must be provided in writing at least 10 calendar days prior to the meeting. By its own admission, the district failed to provide Notice of Meeting for the meeting conducted September 20, 2022. This is a violation under IDEA and state law.

Procedural Violation #2 - Failure to provide a sufficient reason as to why the student would not receive additional social work time in the IEP amendment dated September 20, 2022.

State and federal laws and regulations require that educational placement decisions be made by the IEP team, based on the child's individual needs in accordance with LRE provisions. (34 C.F.R. 300.116; 34 C.F.R. 300.320; K.A.R. 91-40-21). When the IEP team considers a related service option, the team may decide that the related service is, or is not, needed. If the option is rejected, the education agency is required to provide a description of "other options the agency considered and the reasons why those options were rejected". (K.S.A. §72-3432(c); K.A.R. §91-40-26(a)(1); 34 C.F.R §300.503(b)(6)). OSEP has stated that "in all cases placement decisions must be individually determined, based on the child's IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience". Federal Registrar, 46588.

Based on the foregoing, USD #379 is directed to take the following actions:

1. Within 30 Calendar days of the date of this report, USD #379 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
    a. Comply with federal and state regulations in accordance with, K.A.R. 91-40-17(a)(2), which requires a school to provide parents with a written notice of any IEP meeting. This notice has specific content requirements and must be provided in writing at least 10 calendar days prior to the meeting.
    b. Comply with state and federal laws and regulations in accordance with, 34 C.F.R. 300.116; 34 C.F.R. 300.320; K.A.R. 91-40-21; K.S.A. §72-3432(c); K.A.R. §91-40-26(a)(1); and 34 C.F.R §300.503(b)(6)); which require that educational placement decisions be made by the IEP team, based on the child's individual needs in accordance with LRE provisions. (34 C.F.R. 300.116; 34 C.F.R. 300.320; K.A.R. 91-40-21). When the IEP team considers a related service option, the team may decide that the related service is, or is not, needed. If the option is rejected, the education agency is required to provide a description of "other options the agency considered and the reasons why those options were rejected". (K.S.A. §72-3432(c); K.A.R. §91-40-26(a)(1); 34 C.F.R §300.503(b)(6)).
2. No later than March 10, 2023, USD #379 shall contact TASN to request that TASN conduct a training for all special education staff, school psychologists, social workers, and administrators at Lincoln Elementary School regarding:
    a. The IDEA requirements related to procedures and processes as it pertains to required IEP documents (Notice of Meetings, Prior Written Notice, etc.)

b. Training regarding best practices in writing and implementing a Behavior Intervention Plan in the IEP.

c. No later than five days after the completion of the TASN training, USD #379 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.

d. In addition, USD #379 will provide SETS with any handouts and/or a copy of the presentation.

3. No additional corrective action is ordered regarding the following:

a. The allegation of a violation of federal and/or Kansas special education laws or regulations that the student was denied access to the same aged peers, non-academic activities, and field trips due to the student's disability is not substantiated.

b. The allegation of a violation of federal and/or Kansas special education laws or regulations that the student is not being educated in the Least Restrictive Environment is not substantiated.

c. The allegation of a violation of federal and/or Kansas special education laws or regulations that special education services were not provided after the Manifestation Determination Review is not substantiated.

4. Further, #379 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 within 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) as described below.

Investigation conducted by:

Ashley Niedzwiecki
Attorney

Dr. Crista Grimwood
Education Program Consultant

KANSAS
STATE DEPARTMENT OF
EDUCATION
900 S.W. Jackson Street, Suite 102
Topeka, Kansas 66612-1212

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

Ashley Niedzwiecki
Attorney

Dr. Crista Grimwood
Education Program Consultant

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 #383
ON FEBRUARY 13, 2023

DATE OF REPORT MARCH 15, 2023

This report is in response to a complaint filed with our office on behalf of the student by his father, The parent In the remainder of the report, The student will be referred to as "the student." The parent is the student's father and in the remainder of this report will be referred to as "the father" or "the parent.

The complaint is against USD #383 (Manhattan-Ogden Public Schools) who provide special education and related services to students in their district. The student is enrolled in a private school, Flint Hills Christian School and receives special education services through USD #383. The student's special education services are delivered at Flint Hills Christian School by employees of USD #383. In the remainder of the report, "school" or the "district" 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 February 13, 2023 and the 30-day timeline ends on March 15, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator, initially interviewed the father by telephone on February 15, 2023. Additionally, the Complaint Investigator exchanged emails with the father between February 15 - March 2, 2023.

USD #383 made the following school staff available for a conference call interview with the Complaint Investigators on March 2, 2023: Andrea Tiede, Executive Director, Special Services, USD #383, Dr. Roger Christian, Assistant Director of Special Services, USD #383, Emily Williams, School Psychologist, USD #383

The Complaint Investigator also exchanged emails with Ms. Tiede between February 16. 2023, through March 2, 2023 to gather additional information and to clarify documentation provided by the district.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials submitted were carefully read and used in consideration of the issue. They include:

- ● Individualized Education Program dated December 16, 2021
- ● Communication Log for the student between parents and Ms. Barbara Klephart, special education teacher for dates September 8, 2022-January 9, 2023
- ● Text from parent to Ms. Hanna King, social worker on October 14, 2022 (no time)
- ● Email from special education teacher to parents dated October 20, 2022 at 2:13 p.m.
- ● Email from special education teacher to parents dated November 18, 2022 at 3:39 p.m.
- ● Notice of Meeting dated November 18, 2022 for December 5, 2022 IEP meeting
- ● Email from social worker to parents dated December 1, 2022 at 12:23 p.m.
- ● Email from social worker to parents dated December 5, 2022 at 4:59 p.m.
- ● Student Progress Reports dated December 5, 2022 - Quarter 2
- ● Individualized Education Program dated December 5, 2022
- ● Prior Written Notice dated December 16, 2022 for December 5, 2022 IEP meeting
- ● Email from special education teacher to father dated December 15, 2022 at 3:41 p.m.
- ● Email from father to special education teacher dated December 15, 2022 at 8:18 p.m.
- ● Email from special education teacher to parents dated December 16, 2022 at 2:17 p.m.
- ● Email from special education teacher to father dated December 16, 2022 at 2:41 p.m.
- ● Email from special education teacher to father dated December 16, 2022 at 2:54 p.m.
- ● Student Progress Reports dated December 16, 2021
- ● Email from special education teacher to father dated January 9, 2023 at 1:59 p.m.
- ● Email from father to Ms. Emily Williams, school psychologist and special education teacher dated January 25, 2023 at 8:00 a.m.
- ● Notice of Meeting dated January 26, 2023 for February 16, 2023 IEP meeting
- ● Email from school psychologist to father dated January 26, 2023 at 2:36 p.m.
- ● Email from school psychologist to father dated January 30, 2023 at 11:30 a.m.
- ● Email from father to school psychologist dated January 31, 2023 at 7:06 p.m.
- ● Email from school psychologist to father dated February 13, 2023 at 11:42 a.m.
- ● Prior Written Notice dated February 13, 2023 for February 13, 2023 IEP meeting
- ● Individualized Education Program dated February 16, 2023
- ● District Response dated February 23, 2023

- ● Barbara A. Klephart Kansas State Board of Education, License Number 4126143572, expiration 5/21/2023

Background Information

This investigation involves an 11th grade student who is currently enrolled at a private school. He receives special education services both in-class and pull-out during study hall along with social work direct and consultative services. The student attends general education classes during the day with pullout special education services during study hall on Mondays, Wednesdays, and Friday. Every other Friday he reduces his study hall time to participate in Social Work services. All special education services are provided through USD #383. His special education and social work providers are employees of USD #383. He was last re-evaluated during December 16, 2021 and qualifies for special education and related services under the exceptionality category of autism.

The student spends time in both parent's homes and both parents are active participants in the student's education.

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 four following allegations were investigated.

> ISSUE ONE: The USD #383, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parents access to student special education records including regular reports of progress as specified in the IEP during the 2022-2023 school year, specifically in regard to social work services and social skills goals.

Positions of the Parties

The father alleged that the social worker did not provide updates on the social work goals to the October 22 Quarter 1 progress notes. This error was only discovered when the father received an email from the social worker proposing to eliminate the services due to progress.

When the father went to review the student progress that warranted the dismissal of services, he discovered that no progress updates were provided.

The father further reports that he is not given equal access to his student's grade, schedules, and IEP notices in spite of making this request to the school's principal. He states that the student's mother gets this information but he is excluded from receiving this information.

USD #383 acknowledges that the students October 2022 progress notes contained no input from the social worker. It was discovered that the information had been entered but not saved. The progress notes were later completed and redistributed. This district responds that the father and mother are both listed as parents and are provided with all special education paperwork. They further state that access to the student's grades and school schedule is not addressed through special education.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #383.

The district reported that both parents are listed as parents of the student and therefore automatically receive all special education generated documents such as meeting notices, IEPs, progress notes and prior written notices through the district's IEP management program.

An email from the father on or about October 4, 2022 to the principal of the private school requested information such as schedules, report cards and IEP notifications be sent to me as well as my ex-wife. The father reported that he did receive an email from the principal containing instructions on how to access his student's grades and update contact information to receive information.

The district reports that the private school schedules the classes, distributes grade cards, and oversees communications parent/teacher communications for their employees.

The district reported and documents show that four types of documents were distributed to the parents during the 2022-2023 school year: 1) Notices of meetings for upcoming IEP meetings; 2) IEP; 3) Prior Written Notices following IEPs; and 4) Progress Reports for the student's progress on his IEP goals.

Emails from the father to the school acknowledge and communication logs from the district show that the father received information from the district about the December 5, 2022 IEP meeting at 3:45 p.m. and February 13, 2023 IEP meetings and signed in attendance at both IEP meetings.

The Notice of Meeting for the December 5, 2022 annual IEP meeting was emailed by the special education teacher to both parents on November 18, 2022 at 3:39 p.m.

The district acknowledges that the Quarter 1, October 22 Progress reports were not updated with the goals for which the social worker was responsible.

The father reports and texts show the father contacted the district about the incomplete Quarter 1, October 2022 Progress reports.

- A text from the parent to social worker on October 14, 2022 (no time) with this conversation, Parent: "Did you get a chance to do the progress reports?" Social Worker: "Doing them right now! Today is our work day for conferences."

The district and father report and emails show that the corrected and completed Quarter 1, October 2022 Progress reports and updated IEP were distributed to the father on December 6, 2022.

Applicable Regulations and Conclusions

According to Federal Regulations at 34 C.F.R. 300.320(a)(3) and K.S.A. 72-3429(c)(3) the IEP must report when the child's progress toward annual goals will be reported. Typical district practice is quarterly, in coordination with school district report cards. The reporting may occur in writing or a meeting with the parents but must show progress toward the goals in the method indicated on the IEP and include a description of the child's progress towards the child's measurable annual goals.

In this case the district acknowledged that it did not provide complete progress reports for Quarter 1, October 2022. It is noted that the district corrected the error when discovered and withdrew a proposed action that was based on student progress on a goal because it had not shared the report of progress in a timely manner.

Federal Regulations implementing the IDEA at 34 C.F.R. 300.504(c) and K.S.A. 72-3430 state that parents of students with special education services are to have access to all records and adequate notice of meetings to participate in decision-making for identification, evaluation, educational placement, and provision of a free appropriate public education for the child. If parents are divorced, regardless of which parent has primary custody, the school must provide Notice of Meetings and Prior Written Notice of any special education action to both parents. It is found that in this case the district provided those records to the father. The records that the father alleges he did not receive are the responsibility of the private school and are not records for special education services.

Based on the foregoing, the allegation that USD #383 failed to provide the father with regular reports of progress, specifically during Quarter 1, October 2022 of the 2022-2023 school year *was* substantiated.

ISSUE TWO: The USD #383, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide notice of meetings and changes in services to parents for the student's special education actions during the 2022-2023 school year, specifically the father.

Positions of the Parties

The father alleged that when he arrived for the annual IEP meeting proposed at 3:45 p.m. on December 5, 2022 on the Notice of Meeting he was informed by the special education teacher that the student and mother would not be in attendance and that the teacher had met with them earlier in the day to discuss the IEP. The social worker did not attend the IEP at 3:45 p.m. and wrote in an email, "I assumed that when the special education teacher shared you all were meeting at 12:45 that the meeting after school had to be cancelled." The father states he was never informed of the 12:45 p.m. meeting. He states that when the student's IEP was mailed out it contained two attendance sheets, one signed by the student and parent indicating that there was an earlier IEP meeting. Additionally, the mother signed consent to dismiss social work services during the 12:45 p.m. discussion of the IEP.

USD #383 responded that the father was adequately notified of the December 5, 2022 3:45 p.m. and February 13, 2023 IEP meetings. However, the district responds that student's mother informed the special education teacher that she would not be able to attend the planned IEP meeting on December 5, 2022 at 3:45 p.m. because she was picking up the student to attend an out-of-town athletic event. The teacher asked the mother if she would like to join by phone. The mother stated that she would not have access to adequate cell phone coverage at 3:45 p.m. As a last resort, the special education teacher made the decision to review the IEP with the mother. The mother signed the attendance page of the draft IEP and signed consent for a proposed action to discontinue social work services.

When the father arrived for the planned December 5, 2022 meeting he learned that the student's mother had consented to dismissal of social work services for the student and said he did not agree with the dismissal of services. Although he signed the attendance page he would not sign the prior written notice for consent to dismiss social work services. Due to the father's concern the social work services and social work goals the district were not dismissed in the December 5, 2022 annual IEP in spite of the mother signed consent to dismiss.

The father later sent an email on January 25, 2023 sharing concerns surrounding the December 5, 2022 IEP meeting. As soon as the special education administration became aware of what transpired, the school psychologist, who often acts as the LEA representative in the private school was instructed to call a new IEP meeting with both parents in attendance to resolve the issue. Both parents attended a meeting to draft a new annual IEP on February 13,

2023 and the team agreed to continue social work in the February 13, 2023 IEP. As a result of the father's email notifying the USD 383 special education administration procedures were reviewed regarding notification to parents and procedures for conducting meetings.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #383.

The findings of Issue One are incorporated herein by reference.

The father and district agree, and documentation show the father was provided adequate Notice of Meeting to participate in the December 5, 2022 at 3:45 p.m. and February 16, 2023 IEP meetings.

The district reports and documentation show that the special education teacher, social worker, mother, and student met at 12:45 p.m. and while reviewing the IEP draft the mother signed consent for a material change of service to discontinue social work services and goals.

No documentation was found that waived notice for changing the IEP meeting from 3:45 p.m. on December 5, 2022 to December 5, 2022 at 12:45 p.m. when the special education teacher, social worker, mother, and student met.

The father reports he was unaware of the December 5, 2022 12:45 p.m. meeting time until he arrived for the planned December 5, 2022 3:45 p.m. IEP meeting.

The father reported that the special education teacher presented the IEP at the December 5, 2022 meeting at 3:45 p.m. without a social work goal for the student.

The father questioned why the social worker was not at the December 5, 2022 IEP meeting at 3:45 p.m. when proposing dismissal of services and goals after he had previously questioned proposed changes to social work services without supporting data or progress reports to support it.

The December 5, 2022 IEP at 3:45 shows the father signed as a participant and did not consent to dismissing the social work services and discontinuing the social work goal.

The father reported that new social work goals were drafted for the student based on the father's suggestion with the IEP team members present (classroom teachers and paraprofessionals) at the December 5, 2022 meeting at 3:45 p.m.

The final December 5, 2022 IEP did not reflect the consent provided by the mother to discontinue social work services from the 12:45 p.m. input meeting.

The final December 5, 2022 IEP included continued social work services and goals for social work consistent with those discussed during the 3:45 p.m. December 5, 2022 meeting.

The district offered an additional IEP meeting in February 2023 to ensure all team members were participants in the IEP and a new IEP was written and implemented on February 13, 2023.

Applicable Regulations and Conclusions

According to Federal Regulations at 34 C.F.R. 300.501(b)(2); 34 C.F.R. 300.322 (b)(c) and Kansas Regulations K.A.R. 91-40-17(a),(b)(1); K.A.R. 91-40- 21(c),(d); K.A.R. 91-40-24(e) the parents are to be provided notice of meetings (in Kansas 10 days prior written notice unless the parent agrees to waive that notice) to ensure that they have the opportunity to participate in the meetings.

In this case the district did provide adequate notice for the two IEP meetings held during the 2022-2023 school year. The meeting held at 12:45 with the mother, student and social worker was not an IEP meeting, but rather a meeting to gather input from team members.

Although consent to a material change of service can be obtained by only one parent, the December 5, 2022 meeting at 12:45 p.m. was not an IEP meeting and consent cannot be signed during a parent input meeting.

Based on the foregoing, the allegation that USD #383 provided notice of meeting and changes in services to parents for the student's special education actions during the 2022-2023 school year is *not* substantiated.

It is noted that the district in recognition of the confusion offered and conducted a new IEP meeting with the entire team in attendance. Further, the district has reviewed their procedures for parent notification and procedures for conducting meetings.

> ISSUE THREE: The USD #383, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide parent input into the student's 2022-2023 IEP thereby denying the student FAPE.

Positions of the Parties

The father alleged that when he arrived at his son's annual IEP meeting at the time, date and location listed on the Notice of Meeting he learned the meeting was held with the child's mother and his son's social work services were discontinued without his input.

USD #383 responded that staffing notes and the student's IEPs for the 2022-2023 year show the parents were in attendance and provided input. The further state that they agreed to continue the student's social work services.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #383.

The findings of Issues One and Two are incorporated herein by reference.

The parent and district agree that the student's social work services were not discontinued after the father stated he did not agree to consent to dismiss the services.

The parents and district met on February 13, 2023 to finalize an IEP that was implemented on February 13, 2023.

The February 13, 2023 IEP shows that all team members, including both parents and the social worker were in attendance and signed the IEP.

Applicable Regulations and Conclusions

According to K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b),(c) the IDEA was designed to provide parents the opportunity to participate in decision making for their child during the development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE).

It is found that the December 5, 2022 12:45 p.m. meeting with the mother, student, social worker, and special education teacher was to obtain parent input and not decision-making nor consent for dismissal of services.

The IEP meeting on December 5, 2022 at 3:45 considered the input from the 12:45 p.m. meeting to discontinue social work services, thereby representing input from both parents.

Based on the foregoing, the allegation that USD #383 failed to provide parent participation for their student's IEP during the 2022-2023 school year was *not* substantiated.

> *ISSUE FOUR*: The USD #383, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide qualified staff for the 2022-2023 school year thereby denying the student FAPE.

Positions of the Parties

The father alleged that numerous errors have been made in the special education services for his student in both communication and handling of documents. The father stated that most of the documentation errors were created by the special education teacher. The father states he

is concerned the special education teacher is working outside of her scope of practice without adequate supervision since she is placed at the private school. The school psychologist acts as the LEA representative and as such should have been aware that progress data had not been provided by the social worker.

USD #383 responds that the special education teacher has met criteria in Kansas to be considered qualified in her assigned role as a special education teacher.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #383.

The findings of Issues One, Two and Three are incorporated herein by reference.

IEPs dated December 16, 2021, December 15, 2022 and February 13, 2023 list Barbara A Kephart as the student's special education teacher.

The Kansas State Board of Education shows Barbara A Kephart has the following certifications/endorsements associated with her teaching license #4126143572 with an expiration date of May 21, 2023

- Provisional Teacher License for High-Incidence Special Education, Effective 1/4/2022
- Professional License Elementary K-9 Effective 6/27/1997
- Professional License English for speakers of other Languages PRK-12, Effective 7/28/2018
- Professional License Special Education interrelated K-9, Effective 6/27/1997.
- Professional License Special education Supervisor/Coordinator, Effective 2/26/2002

According to the Kansas State Department of Education teachers with endorsements for High-Incidence Special Education are appropriately licensed to teach students with autism

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.156 and K.A.R. 91-40-43 ensures that special education and related services provided to private school children are provided by personnel who meet the same standards as the standards for public school personnel, except that private school teachers who provide services to private school children shall not be required to be highly qualified under the federal law.

The student's teacher has a current and appropriate teaching license to teach students who qualify for special education as a child with autism.

Based on the foregoing, it is *not* substantiated that USD #383 failed to provide qualified staff for the 2022-2023 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 area:

A. According to Federal Regulations as 34 C.F.R. 300.320(a)(3) require school districts to report the child's progress toward annual goals regularly and specify it in the IEP. In this case the district reports this progress in Quarters in coordination with the release of student grade reports during the school year.

   In this case, the district failed to provide the parents with a complete report of progress for Quarter 1 during October 2022. Specifically, no update was provided for the goals implemented by the social worker.

B. Based on the foregoing, USD #383 is directed to take the following actions:
   1. Within 15 calendar days of the date of this report, USD #383 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with federal regulations at 34 C.F.R. 300.320(a)(3) which require school districts to report the child's progress toward annual goals regularly.
   2. No later than April 15, 2023, USD #383 will provide to Special Education and Title Services (SETS) evidence of written procedures for parent notification and procedures for conducting meetings.
   3. Further, USD # 383 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. 91-40-51(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 FEBRUARY 13, 2023

DATE OF REPORT MARCH 16, 2023

This report is in response to a complaint filed with our office on behalf of the student by his parents, The parents. In the remainder of the report, the student will be referred to as "the student". The mother will be referred to as "the mother" and the father will be referred to as "the father". Together, the parents will be referred to as "the parents" or "the complainants".

The complaint is against USD #437, Auburn / Washburn Public Schools. In the remainder of the report, "USD #437," "the "school," the "district", and the "local education agency (LEA)" shall refer to this responsible public agency.

The Kansas State Department of Education (KSDE) allows approximately 30-days to complete the investigation of a child complaint and issue a report from the date a complaint is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 13, 2023 and the final report was issued on March 16, 2023.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the mother by telephone on February 15, 2023 to clarify the issues of the complaint. The Complaint Investigator interviewed the father by telephone on March 1, 2023. The mother was interviewed by telephone on March 3, 2023 and again on March 7, 2023.

The parents requested and provided written consent for Rebekah Phelps-Davis, the family attorney, to be interviewed during the investigation. Ms. Phelps-Davis was interviewed on March 3, 2023.

USD #437 made the following administrative staff available for telephone interviews on February 28, 2023:

- Kevin Raley, Director of Special Services
- Ed Rains, Principal of Washburn Rural High School

In completing this investigation, the Complaint Investigator relied on the following documentation provided by the complainants and the district in making findings and conclusion:

- Evaluation Team Report dated October 22, 2021
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated October 26, 2021
- Email from Charles Nimz, Assistant Principal at Washburn Rural High School, to the mother dated December 6, 2021 at 7:13 a.m.
- 2022-23 Infinite Campus Records for the student
- Documented Response to Formal Written Complaint dated January 2, 2023
- Documented Response to Formal Written Complaint dated January 12, 2023
- Email from the mother to Ed Rains, Principal of Washburn Rural High School, dated February 8, 2023 at 11:58 a.m.
- Letter dated February 10, 2023 written by the parent to the USD #437 Board of Education
- District Response to the Allegations dated February 24, 2023
- USD #437 School Board Policy KN: Complaints of Discrimination
- USD #427 School Board Policy JRB: Release of Student Records

Note that the parents and LEA also provided multiple emails and additional documentation related to the allegations. All of this information was reviewed and considered as background information for the investigation.

Background Information

This investigation involves a seventeen-year-old student currently enrolled at Washburn Rural High School in the eleventh grade in USD #437. The student has attended this school at this building since entering high school in the ninth grade.

Parents and the school staff noted the student struggled during his freshman year in high school. The mother made an initial referral for a special education evaluation during the spring of 2021. Parents were given prior written notice proposing a special education evaluation and written consent for the evaluation was provided on May 13, 2021. This evaluation was paused during the summer break when school was not in session and resumed at the beginning of the 2021-22 school year.

The initial eligibility meeting was held on October 22, 2021 with the father in attendance. The Evaluation Team Report concluded:

> According to medical records, the student has been diagnosed with anxiety and adjustment disorder. Parent report is remarkable for school phobia and panic

> attacks. At times, symptoms of these diagnoses are believed to impact the student's functioning in the school setting; however, at present, he appears to be making good progress towards graduation with low intensity supports/accommodations. . . Based on evaluation data (medical records, observation, rating forms interviews), it is the opinion of the school psychologist that the team consider the student as a student with an exceptionality. However, it is recommended that the team not initiate special education services due to the student's current progress and demonstrated needs. Specifically, it is believed that the student's school-based needs can be met with general education resources and accommodations.

The multidisciplinary team reviewed and considered the Evaluation Team Report at the eligibility determination meeting held on October 22, 2021. At the conclusion of that meeting, the multidisciplinary team determined that the student was a child with a disability due to medical diagnoses of anxiety and adjustment disorder. However, the multidisciplinary team determined student was not in need of specially designed instruction and was not eligible for special education services.

USD #437 provided the parents with prior written notice of this decision on October 26, 2021, describing the action as follows:

> The team agreed that the student meets Prong 1 of the eligibility criteria (Emotional Disturbance), and agreed the student is not currently demonstrating a need for specially designed instruction. The team's determination supports eligibility under Section 504.

Charles Nimz, Assistant Principal at Washburn Rural High School, sent the mother an email on December 6, 2021 which stated:

> Wow, what a semester for the student! He has excellent grades heading into the final couple weeks of the semester. At the completion of the student's education evaluation it was recommended a possible 504 Plan be written since he did not qualify for an IEP. If you would like to proceed, we will need to schedule a meeting with the student's team of teachers/counselors/etc. If not, we can continue to monitor the student's progress and intervene when necessary.

The parents and school staff both reported the student was successful during the remainder of the 2021-22 school year and that a 504 plan was never developed for the student.

It should be noted that this investigation will not address any issues related to Section 504 of Rehabilitation Act. The parent has already filed a complaint with the Office of Civil Rights, the agency tasked with the investigation of such allegations.

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 #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate child find procedures during the 2022-23 school year by failing to evaluate the student for special education and related services and to discipline the student due to his suspected disability.

Positions of the Parties

The complainants alleged USD #437 failed in its child find obligation because the district was aware of the student's disability resulting from the medical diagnoses of anxiety and adjustment disorder but did not take any action when the student exhibited a significant change in behavior during the 2022-23 school year. The parents believe that the student's disability affecting his education and mental health was "left unaddressed" by USD #437 which resulted in "severe discipline measures including suspending him for 5 days without a due process hearing for minor infractions". The investigator notes that whether a student is entitled to a disciplinary due process hearing prior to a short-term suspension is a matter of general education law, not special education law. Thus, such matters cannot be addressed in a special education complaint. The parents are upset that the district was not responsive to the student's change in behavior, especially since an initial evaluation had been completed the prior school year and the student identified as a student with a disability.

The parents believe USD #437 already knew the student was a student with a disability and should have suspected the student was in need of special education during the first semester of the 2022-23 school year because of the increase in inappropriate behavior at school. The parents indicated USD #437 should have initiated a referral for a special education evaluation following the mother's October 2022 contact with the school alerting them to their concerns

and requesting an investigation of the behavior management practices of the student's math teacher, Lydia Byers.

Further, the parents believe the student's disability and need for special education should have been a factor in the assignment of discipline during the 2022-23 school year because the district was aware of the student's disability and possible need for special education services as early as the end of October 2022.

The district indicated the student had just been evaluated for special education in October during the prior school year and was not found eligible for special education and related services at that time. The LEA reported the student averaged one incident of disrespect to staff per month prior to the Thanksgiving break. However, after returning from break the student's behavior escalated resulting in four disciplinary incidents over a three-week period resulting in detention, in-school suspension (ISS), and out-of-school suspension (OSS).

The school staff reported they were implementing supports and interventions during the first semester of the 2022-23 school year including those recommended by Children's Mercy Hospital which were described in the Evaluation Team Report dated October 22, 2021. The student was suspended out-of-school for five days in December followed by the holiday break.

Immediately upon returning from the holiday break, the district indicated the parents made two requests for a 504 plan to be developed and implemented. USD #437 stated that staff are currently working with the parents on developing an individualized 504 accommodation plan for the student.

In February 2023, the parents requested another special education evaluation for the student to determine if specialized instruction was needed because of his disability. The district responded by obtaining written consent for another special education evaluation and is currently within the 60-school-day timeline to complete the evaluation and determine eligibility for special education.

The LEA reported that the student has only been assigned one-day of in-school suspension (ISS) and five days of out-of-school suspension (OSS) during the 2022-23 school year. This amount of disciplinary action does not yet require any specialized disciplinary considerations under the IDEA regulations.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The Behavior Detail Report in Infinite Campus and interviews with both parties found the following disciplinary incidents occurred during the 2022-23 school year to-date:

Date of Incident	Type of Inappropriate Behavior / Staff member	Consequences
September 12, 2022	Profanity in the classroom Ms. Byers (Math Teacher)	1 demerit point
October 19, 2022	Class disruption Ms. Byers (Math Teacher)	3 hours detention
October 24, 2022	Disrespect to staff Ms. Byers (Math Teacher)	3 hours detention
November 29, 2022	Class disruption Ms. Byers (Math Teacher)	2 demit points
December 5, 2022	Class disruption Ms. Byers (Math Teacher)	3 hours detention
December 9, 2022	Disruptive behavior / Disrespect to a student Andrew Nelson (ISS Teacher)	3 demerit points
December 12, 2022	Disrespect to staff / Point accumulation Jan Hutley (Assistant Principal)	5 demerit points 5 days of OSS

The parents and district acknowledged that the parents first contact with the district regarding concerns about the student's behavior occurred following the two detentions assigned in October 2022. At that time, the mother shared concerns that all of the disciplinary incidents were occurring in the student's math class and wanted the district to investigate the behavior management practices of the math teacher to be sure the student was not being "targeted."

The district and parents acknowledge that as a result of a disciplinary incident on December 12, 2022, the father had a phone conversation with Ed Rains, Principal of Washburn Rural High School, regarding the difference between the use of profanity and disrespect toward a student or staff. During this conversation, the father referred to the initial evaluation for special education completed on October 22, 2021 and the Emotional Disturbance resulting from his medical diagnoses of anxiety and adjustment disorder as well as school phobia resulting from ongoing interactions with Ms. Byers and Ms. Hutley.

Infinite Campus Attendance Records document the student was given five-days of OSS beginning on December 12, 2022 through December 16, 2022, which was the last day of school before the holiday break.

Documentation and interviews found the parents filed a formal written complaint with Dr. Scott McWilliams, USD #437 Superintendent, and the USD #437 Board of Education on January 2, 2023 alleging harassment, discrimination, and retaliation. In the formal complaint, the parents wrote:

> We want another 504 Plan meeting to look at accommodations and positive behavior supports being implemented by the school in 2023 for our son, who qualifies for such due to his disabilities. The school is well aware of the student's disabilities and denied him reasonable supports this school year.

In an email written to Mr. Rains on February 8, 2023, the mother stated:

> Additionally, you have his grade history, attendance history, behavior history and all the information from his Special Education evaluation to know how his school phobia and other mental health issues manifest both in and out of the classroom while at school. So, I do not understand why Ast. [sic] Principal Jan Hutley was not addressing all of this to get the student the support and services he needed to be successfully [sic], during her oversight of the student. And, when we requested back in December 2022 for his re-evaluation 504 plan meeting, why it was not addressed then, prior to him starting the 2023 school year.

The mother sent an email to the Investigator on March 5, 2023 in regards to the impact of the disciplinary action on the student's grades and school participation due to it triggering his school phobia. The parent noted,

> The student is now flunking ALL of his courses as a direct result of being suspended and among other things, I've spelled out to you about his exceptionalities, educational needs, and the schools failure to address them.

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.

Federal regulations implementing the IDEA at 34 C.F.R. 300.301(b) allow either a parent or a public agency to initiate a request for an initial evaluation to determine if the child is a child with disability and in need of special education.

Federal regulations implementing the IDEA at 34 C.F.R. 300.534(b)(2) state that a student suspected of having a disability who has not been determined eligible for special education and related services under the IDEA may be subjected to the same disciplinary measures applied to students without disabilities who engage in comparable behaviors so long as the district had no reason to suspect eligibility under the IDEA.

In this case, interviews and documentation show the student was initially evaluated for special education services on October 22, 2021. At that time the student was identified as a student with the exceptionality of Emotional Disturbance but the multidisciplinary team determined the student was not in need of specially designed instruction at that time.

The father participated in that eligibility determination meeting and the LEA provided the parents with appropriate prior written notice on October 26, 2021. Documentation and interviews found that both the parents and school staff considered the student successful with general education supports during the remainder of the 2021- 22 school year and the beginning of the 2022-23 school year.

Both the parents and LEA acknowledge that the mother shared concerns with school staff in October 2022 following the assignment of detentions on October 19, 2022 and again on October 24, 2022, and that the father shared concerns with school staff following the assignment of five-days of OSS on December 12, 2022.

The parents contend that sharing these concern should have put the district on notice that because the student had been identified as a child with an Emotional Disturbance, he was now in need of specially designed instruction. The parents believe the district should have understood that a meeting to discuss additional interventions through a 504 plan and an IEP was now necessary in light of the December 6, 2021 email from Mr. Nimz, which stated:

> At the completion of the student's education evaluation it was recommended a possible 504 Plan be written since he did not qualify for an IEP. If you would like to proceed, we will need to schedule a meeting with the student's team of teachers/counselors/etc. If not, we can continue to monitor the student's progress and intervene when necessary.

The documentation reviewed during the investigation supports USD #437's position that the general education supports were successful during the remainder of the 2021-22 school year and the beginning of the 2022-23 school year. Following the assignment of the detentions of October 19, 2022 and again on October 24, 2022 for disciplinary incidents occurring in the classroom of Ms. Byers, the mother shared concerns about the classroom management and possible "targeting". This did not trigger the district to suspect the need for specially designed instruction under the IDEA but instead triggered school administration to ascertain the instruction in the math class.

There were three disciplinary incidents that occurred in close proximity on December 5, December 9, and December 12, 2022 which resulted in five-days of OSS. The OSS was assigned to run from December 12, 2022 through December 16, 2022, which was the last day of school before the holiday break. Immediately upon returning from the holiday break, the parent filed a formal complaint and specifically requested a meeting to consider a 504 accommodation plan. Again, this did not trigger the district to suspect the need for specially designed instruction under the IDEA but instead triggered school administration to proceed with the development of a 504 accommodation plan.

Moreover, federal regulations at C.F.R. 300.534(c) state that while there are situations where a district may be deemed to have knowledge that a child is a child with a disability, there are three notable exceptions. One of the exceptions says a school district is not deemed to have knowledge that a child is a child with a disability when the child has been evaluated and determined to not be a child with a disability under the IDEA.

Based on the foregoing, a violation of the IDEA requirements for failure to meet child find requirements by not suspecting that this particular student with a disability was in need of specially designed instruction and thus eligible for disciplinary protection under the IDEA is *not* substantiated.

> ISSUE TWO: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to the parents' requests for a special education evaluation for the student during the 2022-23 school year.

Positions of the Parties

The parents indicated they first shared concerns about the student's behavior in the school setting following the assignment of two detentions on October 19 and October 24, 2022. However, USD#437 failed to initiate a special education evaluation. The parents again shared concerns about the student's behavior being the result of his medical diagnoses of anxiety, adjustment disorder, and school phobia upon the assignment of five-days of out-of-school

suspension (OSS) on December 12, 2022. But again, the district did not initiate a special education evaluation or a meeting to develop a 504 accommodation plan for the student.

The parents report they requested a meeting to develop a 504 accommodation plan for the student on January 2 and again on January 6, 2023. Upon that request, the parents believe the district should have responded by considering whether or not the student needed specialized instruction due to his previously identified disability of Emotional Disturbance. However, it wasn't until the parents made a specific request for a special education evaluation on February 3, 2023, that the district proceeded with obtaining consent for a second initial evaluation for special education.

The district reported that the mother first contacted the district staff regarding concerns about behavior management in Lydia Byer's math class following the assignment of two separate detentions at the end of October, 2022. However, the mother's concerns related to Ms. Byer's behavior management skills and "targeting" the student.

School staff also reported that the father contacted the district on December 12, 2022 regarding concerns that the student might need a 504 accommodation plan due to his disability of anxiety disorder, adjustment disorder as well as school phobia. This conversation occurred the same day as the student was assigned five-days of OSS which ended on the last day of school before the holiday break. The district reported it did not have time to respond to the father's concerns because, immediately upon returning to school in January 2023, the parent filed two formal complaints with the Superintendent and USD #437 Board of Education, which also included a request to set up a meeting to discuss the development of a 504 accommodation plan for the student. Currently, the district is working with the parents to develop such a plan for the student.

The parent did not request a second special education evaluation until February 3, 2023 at a meeting with school administrators and the attorneys for both parties. In response to this request, the district obtained written consent to conduct the special education evaluation on February 14, 2023 and is in the process of completing the evaluation at this time.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The findings of Issue One are incorporated herein by reference.

The parents and district acknowledged that the parent first contacted the district regarding concerns about the student's discipline occurred following the two detentions assigned in October 2022. At that time, the parent shared concerns that all of the disciplinary incidents were occurring in the student's math class and wanted the district to investigate the behavior management practices of the math teacher to be sure the student was not being "targeted."

Again, the district and parents acknowledge that as a result of a disciplinary incident on December 12, 2022, the father had a phone conversation with Ed Rains, Principal of Washburn Rural High School, regarding the difference between the use of profanity and disrespect toward a student or staff. During this conversation, the father referred to the initial evaluation for special education completed on October 22, 2021 and the disability of Emotional Disturbance resulting from his medical diagnoses of anxiety and adjustment disorder as well as school phobia resulting from ongoing interactions with Ms. Byers and Ms. Hutley during the 2022-23 school year.

The parents filed a formal written complaint with Dr. Scott McWilliams, USD #437 Superintendent, and the USD #437 Board of Education on January 2, 2023 alleging harassment, discrimination, and retaliation. In the formal complaint, the parents wrote:

> We want another 504 Plan meeting to look at accommodations and positive behavior supports being implemented by the school in 2023 for our son, who qualifies for such due to his disabilities. The school is well aware of the student's disabilities and denied him reasonable supports this school year.

Both the parents and the district staff acknowledge that the parent made a request for another special education evaluation at the February 3, 2023 meeting with school administrators and the attorneys for both the district and family.

Documentation and interviews show that the district responded to this request by providing the parent with a prior written notice proposing a special education evaluation with additional assessment in the areas of social/emotional/behavioral, general intelligence, academic performance, and transition on February 14, 2023. The mother provided written consent for the proposed evaluation on February 15, 2023 and the father provided written consent for the proposed evaluation on February 19, 2023.

USD #437 is currently in the process of conducting this evaluation within the 60-school day timeline to complete the evaluation and determine eligibility, which will end on May 24, 2023.

However, the parents both indicated they were not consulted nor did they participate in any review of existing data to determine the additional areas to be assessed as part of the special education evaluation proposed in the prior written notice dated February 14, 2023.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.301(b) allow either a parent or a public agency to initiate a request for an initial evaluation to determine if the child is a child with disability and in need of special education.

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 and federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1-2) require that an 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.

Following the review of existing data, 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 an evaluation of a child who has or is suspected of having a disability under the IDEA.

In this case, documentation and interviews support a finding that the parents' made a request for a second initial special education evaluation on February 3, 2023. However, the parents reported and there is no documentation to show the parents were conferred with or participated in a meeting to review existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under the IDEA. USD #437 did respond appropriately by providing the parent with prior written notice seeking consent to conduct a special education evaluation with additional assessment on February 14, 2023. The mother provided written consent for the proposed evaluation on February 15, 2023 and the father provided written consent for the proposed evaluation on February 19, 2023. This evaluation is currently being conducted within the 60-school day timeline which will end on May 24, 2023.

Based on the foregoing, a violation of special education statutes and regulations ***is*** substantiated for failing to respond appropriately to the parent request for a special education evaluation, specifically not including the parent in the review of existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under the IDEA during the 2022-23 school year

ISSUE THREE: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), released the student's personally identifiable information without written parent consent during the 2022-23 school year.

Positions of the Parties

The complainants alleged that USD #437 released personally identifiable information (PII) related to this student and a sibling when it shared educational records, specifically the student's October 22, 2021 special education evaluation report along with "other educational records", with the elected members of the school board following the investigation of their January 2, 2023 and January 12, 2023 formal complaints of harassment, discrimination, and retaliation.

It is noted that the second formal complaint dated January 12, 2023 involves another student with an IEP who lives with the family as well as issues not related to the IDEA for the student who is the subject of this investigation. The parents have filed a separate child complaint allegation in regards to releasing the PII of the other student living in their home; therefore, this investigation will only be concerned with the student who is the focus of this complaint and the IDEA allegation of failure to obtain consent prior to releasing the student's PII.

USD #437 acknowledged that Scott McWilliams, Superintendent of USD #437, shared the student's PII with the members of the Board of Education on February 6, 2023. However, this disclosure was in accordance to USD #437 Board Policy KN and JRB.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The findings of Issues One and Two are incorporated herein by reference.

Interviews and documentation found that Dr. McWilliams shared the Documented Response to the Formal Written Complaint dated January 2, 2023 along with supporting documents with members of the school board during executive session on February 6, 2023. The supporting documentation did include the Evaluation Team Report dated October 22, 2021, which describes the initial special education evaluation and the determination of eligibility for special education.

USD #437 School Board Policy KN requires the superintendent to discuss personnel issues with members of the school board in executive session. The LEA indicated the formal complaints filed by the parents' on January 2, 2023 alleged harassment, discrimination, and

retaliation by Washburn Rural High School staff members Jan Hurley, Assistant Principal, and Ed Rains, Principal.

USD #437 School Board Policy JRB allows the release of PII without the consent of the parent or eligible student to "school officials" with a "legitimate educational interest".

The policy defines persons who are considered "school officials" as:

> A school official is a person employed by the school as an administrator, supervisor, instructor, or support-staff member (including health or medical staff and law enforcement unit personnel); the board of education (in executive session); a person or company with whom the school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee such as a disciplinary or grievance committee; or assisting another school official in performing his or her tasks.

The policy states that a school official has a "legitimate educational interest" when the official needs to review an education record in order to fulfill his or her professional responsibility.

Applicable Regulations and Conclusions

Federal regulations implementing IDEA at 34 C.F.R. 300.622 require that parent consent must be obtained before personally identifiable information is disclosed to any other parties, other than officials of the public agency.

In this case, the parents filed a formal complaint against two Washburn Rural High School staff members alleging harassment, discrimination, and retaliation. The results of the investigation into the formal complaint was shared during the executive session of the February 6, 2023 School Board Meeting by Dr. McWilliams, Superintendent of USD #437.

USD #437 School Board Policy KN requires the superintendent to share personnel matters with members of the Board of Education in executive session as the school board is tasked with oversight of the employment of school and district personnel, which would be considered a "legitimate educational interest" under School Board Policy JRB. It is further noted that USD #437 School Board Policy JRB specifically includes the board of education (in executive session) under the definition of "school officials".

Based on the foregoing, a violation of special education statutes and regulations is *not* substantiated for failing to obtain written parent consent prior to releasing the student's personally identifiable information to school board members during the February 6, 2023 USD #437 School Board's executive session.

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 area:

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 #437 did not include the parent in the review of existing data prior to providing the parents with prior written notice for an evaluation and request for consent. Because the parents did not participate in the review of existing data, it is unclear if the proposed initial special education evaluation is comprehensive enough to identify all of the student's special education and related service needs.

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. 300.304(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.

2) USD #437 shall review its procedures and practices with regards to conducting the required review of existing data. Based upon that review, USD #437 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 April 15, 2023, USD #437 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 #437 shall implement the dissemination plan and provide documentation that all special education staff and administrators is the district have received a copy no later than 30 days following the approval date.

3) Within 15 calendar days of the date of this report, USD #437 shall contact the parents to schedule a time to conduct a review of existing data with the parents, which shall include evaluations and information provided by the parents to identify what additional data, if any, that are needed to determine eligibility and the educational needs of the child. The parents may accept or not accept the invitation to review existing data. If the invitation to review existing data is accepted, the review may be conducted by e-mail or by telephone contact, without the need for a physical meeting. Within 5 days of either completion of this review or the parent's rejection of the invitation to review existing data, USD #437 shall notify SETS that the review of existing data with the parents has been completed or rejected by the parents.

4) 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) as described below.

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, M.Ed., 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)

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 437
Auburn/Washburn Public Schools: FC23437-003

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on February 13, 2023, by The parents, on behalf of their child, the student the student. In the remainder of the decision, The parent will be referred to collectively as “the parents”, and The student will be referred to as “the student”. An investigation of the complaint was undertaken by complaint investigators on behalf of the Special Education and Title Services Team at the Kansas State Department of Education. Following that investigation, a Complaint Report, addressing the parent’s allegations, was issued on March 16, 2023. That Complaint Report concluded that there was a violation of special education laws and regulations.

Thereafter, both parties filed an appeal of the Complaint Report. Upon receipt of the appeals, an appeal committee was appointed, and it reviewed the original complaint filed by the parent, the complaint report, the district’s appeal and supporting documents and the parents’ response to the 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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

DISTRICT APPEAL

The following issue in this complaint has been addressed by the Appeal Committee:

Issue: USD #437 appeals the investigator's finding that a violation of special education statutes and regulations is substantiated for failing to respond appropriately to the parent request for a special education evaluation, specifically not including the parent in the review of existing data to determine additional areas of assessment.

The district's appeal begins with three preliminary statements:

First, the district includes the investigator's statement(s): "Parents both indicated they were not consulted, nor did they participate in any review of existing data to determine the additional areas to be assessed as part of the special education evaluation proposed in the prior written notice dated February 14, 2023."

Second, "...parents reported and there is no documentation to show the parents were conferred with or participated in a meeting to review existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under the IDEA."

and

Third, "based on the forgoing, a violation of special education statutes and regulations is substantiated for failing to respond appropriately to the parent request for a special evaluation, specifically not including the parent in the review of existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under IDEA during the 2022-23 school year."

The investigator found that the parents "reported and there is no documentation to show the parents were conferred with or participated in a meeting to review existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under IDEA". However, the committee finds significant evidence to support finding that the parents meaningfully participated and provided input to the district.

Under state and federal law,

> as part of an initial evaluation…each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate…shall review existing evaluation data on the child, [including] evaluations and information provided by the parent of the child; current classroom-based, local, and state assessments and classroom-based observations; and observations by teachers and related services providers. (K.A.R. 91-40-8(c)(1); 34 C.F.R. 300.305(a)(1)(i)-(iii)).

Based on that review, and input from the parent(s), the team will identify any additional data, if any, that is needed. (34 C.F.R. 300.305(a)(1)(i); 34 C.F.R. 300.305(a)(2); K.A.R. 91-40-8(c)(2)). The group, "may conduct its review without a meeting." (34 C.F.R. 300.305(b)).

In the district's appeal, the district states that "based on information regarding concerns about [the student] that [the parents] had relayed to school officials at and surrounding the February 3rd meeting (particularly related to his diagnosis of Schoolphobia/Scolionophobia)", that the school psychologist created a PWN, noting that new data regarding "social/emotional/behavioral status (among other categories)" would be addressed in the evaluation. The district also states that "school staff considered new and existing information based on concerns that the parent's relayed to school officials on February 3rd, 2023, when [the parents] made the initial request for evaluation". The subsequent PWN, drafted February 14th, 2023, proposed "action to the parent, informing them of the proposal to conduct a comprehensive school-based evaluation."

Further, the district, in their appeal, says that statements made to the investigator, by the parents, which "indicated [the parents] were not consulted, nor did [the parents] participate in any review of existing data to determine the additional areas to be assessed" as "demonstrably false." In a review of the evidence of record, as provided by both the district and the parents, the committee finds that the parents were given sufficient opportunities for input and, in fact, the parents provided input as is required under state and federal laws.

On February 3rd, 2023, the investigator found, and the record supports, that the parents requested an initial evaluation during a meeting with the district.

On February 6th, 2023, following this request, the record shows that the district emailed the parents confirming the request for an evaluation. In the email the district states, "in preparation for the evaluation" …" we look forward to receiving the documentation that [the parent] indicated would be provided to us during the meeting" (referring to the February 3rd

meeting). In this email, the district also acknowledges that the parents had concerns about these documents having previously been submitted to the district but asked that the parent provide them again for purposes of this evaluation.

On February 8th, 2023, the investigator notes, and the record confirms, that the parents communicated, by email, with the district. In this email the parents stated that they had attached documentation to "clearly show that [the student] is in need of Special Education Services". The record further shows that the parents provided an outside evaluation labeled "psychological testing results and interpretation". In the email, the parents state that they "provided documentation to the school and worked closely with [the student's] previous teachers, school psychologist and Ast. Principal [name omitted] to get [the student] the support and services [the student] needed to be successful". Finally, in this same email, the parents acknowledge that they are "hesitant to provide FERPA protected information" and state, "I've attached enough documentation to again show [the student's] significant mental health issues and needs related to [the student's] education."

On February 10th, 2023, the record shows that the district again reached out to the parents, through email, asking to "get together and begin talking about [the student's] needs as they relate to [the parents] request for an evaluation". The record shows that the parents responded with a list of times and dates and the date of February 15th was agreed upon for a phone conversation.

On February 14th, 2023, the investigator found, and the record confirms, that the district appropriately provided the parents with a PWN, requesting consent to conduct a special education evaluation.

On February 15th, 2023, the district and the parents spoke, via phone, regarding the student and the evaluation. The record shows that both the district, and the parents, acknowledged that during the phone conversation, the student's social/emotional health, academic needs, bullying, and attendance issues were discussed. The parent states that "I told [the district] I would forward some emails about [the student's] academic needs, along with the psyche scales so that [the district] could clearly see that [the student] was in need of both academic and additional social emotional services and testing". The record shows that the parent did confirm that those documents were forwarded to the district.

When deciding whether an initial evaluation should be conducted districts have the right to meet and review existing data without holding an IEP team meeting, so long as parents are given the opportunity to provide input and that input is considered. (34 C.F.R. 300.305(a); 34 C.F.R. 300.305(b)). In their response to the district's appeal, the parents state that they did not

have meaningful participation because the "school never attempted to reach out to [the parents] to meaningfully participate in the review of all existing data and new data any time before, during, or after the written notice was given". The committee finds this not to be the case. The record illustrates that the district and the parents communicated before, during, and after the district provided the PWN. The parents further state that, although they provided the district with examples of bullying and "reasons why the [the student] was not attending and flunking out of school", that these statements were "irrelevant" to the district and this is "why parents feel unheard, invalidated and are not actively part of the participating team". However, the committee finds no evidence, in the record, to support that the district discounted the parents' concerns.

Furthermore, the committee finds that the law does not require a formal IEP meeting, including parents, to review existing data. Once the district determines an evaluation should be conducted, and what additional data, if any, is needed (based on existing data and parent input), then a district must provide the parents with a prior written notice to obtain consent for the proposed evaluation. The investigator found, and the record confirms, that this process did occur. Once consent is given, any decisions, regarding eligibility, must be made by the eligibility team, including parents, in a formal capacity.

PARENTS' APPEAL

The following issue in this complaint has been addressed by the Appeal Committee:

Issue: The parents appeal the investigator's finding that USD #437, did not violate state and federal regulations implementing the Individuals with Disabilities Act (IDEA), due to a failure to follow appropriate child find procedures during the 2022-2023 school year or by failing to evaluate the student for special education and related services or by disciplining the student due to [the student's] suspected disability.

The parents' appeal includes four "quotations":

Quotation #1: The parents disagree with the investigators statement, "The district indicated the student had just been evaluated for special education in October during the prior school year and was not found eligible for special education and related services at that time".

The committee finds that the parents seem to take issue with the word "just", noting in their response to the quote that "at the point of [the student's] detention in October 2022, it had been one full year since the evaluation conducted in the previous school year". While the

record does confirm that it had been one full year since the previous evaluation, the span of time does not invalidate the investigators statement or counter the use of the word "just". The committee finds that the length of time is the difference of one academic school year to the next academic school year, specifically, the 2021-2022 school year to the 2022-2023 school year. Therefore, the committee does not find fault with the investigator's statement and does not find a violation of state and federal laws.

Quotation #2: The parents disagree with the investigator's statement, "The school staff reported they were implementing supports and interventions during the first semester of the 2022-2023 school year including those recommended by Children's Mercy Hospital which were described in the Evaluation Team Report dated October 22, 2021".

In response to this quote, the parents argue that the district did not provide general education interventions and supports to the student. However, the parents also argue that if the district did provide GEI, then the district should have been on notice that the student was in need of another evaluation, triggering Child Find. Child Find is a requirement for districts to identify, locate, and evaluate students that might need special education services, not a requirement for districts to provide general education interventions. (34 C.F.R. 300.111(1)(i)). The record shows that after conducting the evaluation in October 2021, the district determined that the student was a student with a disability but did not qualify for special education because the student did not require specially designed instruction. Under the law, as noted by the investigator, "where a district may be deemed to have knowledge that a child is a child with a disability, there are notable exceptions. One of these exceptions says a school district is not deemed to have knowledge that a child is a child with a disability when the child has been evaluated and determined to not be a child with a disability under IDEA". (34 C.F.R. 300.534(c)). Therefore, the committee does not find fault with the investigator's statement and does not find a violation of state or federal laws.

Quotation #3: The parents disagree with the investigator's finding, "Based on the foregoing, violation of the IDEA for failure to meet child find requirements by not suspecting that this particular student with a disability was in need of specifically designed instruction and thus eligible for disciplinary protection under IDEA is not substantiated."

In response to this finding, the parents state that the district "was supposed to continue to monitor [the student's] progress and intervene if the need should arise". The parent's further state that because "general education interventions are Child Find activities" …" regardless of disciplinary protection, [the district] was violating Child Find under the IDEA". In their response, the parents seem to correctly acknowledge that the student did not qualify for disciplinary protections under IDEA, however, they misstate that the district "was supposed to continue to

monitor student progress and intervene" by initiating Child Find. As stated above, and as noted by the investigator, "where a district may be deemed to have knowledge that a child is a child with a disability, there are notable exceptions. One of these exceptions says a school district is not deemed to have knowledge that a child is a child with a disability when the child has been evaluated and determined to not be a child with a disability under IDEA". (34 C.F.R. 300.534(c)). Therefore, the committee does not find an error with the investigator's finding and does not find a violation of state or federal laws.

Quotation #4: The parents disagree with the investigator's finding, "Interviews and documentation found that [Administrator] shared the Documented Response to the Formal Written Complaint dated January 2, 2023, along with supporting documents with members of the school board during executive session of February 6, 2023. The supporting documentation did include the Evaluation Team Report dated October 22, 2021, which describes the initial special education evaluation and the determination of eligibility for special education."

In response to this finding the parents note that the executive session did occur on February 6th, 2023, however, continues, highlighting that "the document itself (the student's records) states that it was distributed almost 2 weeks prior to the executive session", on January 27th, 2023. The parents further state that because their original complaint was to the Superintendent about staff members, the board had no "legitimate educational interest" in the student's records.

In review of the district's policy, the committee finds that the Superintendent is required "to discuss personnel issues with members of the school board in executive session". Additionally, the policy states that school officials (including the "board of education (in executive session)), has a "legitimate educational interest" when the official needs "to review an educational record in order to fulfill his or her professional responsibility". The committee finds that the parents argue too fine a distinction by requiring the school board to be *in* executive session before receiving necessary documentation pertaining to the agenda item to be discussed. It is reasonable that a school board, in preparation for an executive session, be provided the documentation necessary to make an informed decision once the board is in executive session.

Further, the parents note that because the student is not an employee of the district, the student's records should not have been provided to the school board. However, the committee finds that the student is the student directly involved in the parents' complaint made to the superintendent regarding USD #437 staff members. As such, the student's records do hold a "legitimate educational interest" and are necessary in order for the school board to fulfill their professional responsibility as it relates to the parents' January 2, 2023,

Formal Written Complaint. Therefore, the committee does not find an error with the investigator's finding and does not find a violation of state or federal laws.

CONCLUSION - DISTRICT APPEAL

The Appeal Committee concludes that the investigator erred in finding that the district violated special education statutes and regulations by failing to respond appropriately to the parent request for a special education evaluation, specifically not including the parent in the review of existing data to determine what additional areas of assessment, if any, were needed to determine eligibility. Under the law, a team, including the parents, and including input from the parents, must determine what additional data are needed to determine eligibility. (34 C.F.R 300.305(a)). There is not a requirement for this review to occur in a formal IEP team meeting. (34 C.F.R. 300.305(b)). The evidence showed that following the parents' request for an initial evaluation on February 3rd, 2023, the district and the parents had numerous conversations regarding the student, the evaluation, and the student's needs. Additionally, the record shows that the district did consider the parents' input, requesting consent for additional information regarding the student's "social/emotional/behavioral" needs, as addressed by the parents. The committee concludes, based on the statements above, that the district did not violate special education statutes and regulations by failing to include the parents in the review of existing data to determine additional areas of assessment.

Therefore, the Committee does not substantiate the investigator's finding of a violation of special education statutes and regulations as it pertains to the issue of failing to respond appropriately to the parents' request for a special education evaluation, specifically not including the parents in the review of existing data to determine additional areas of assessment and orders that no corrective action is required from the district on the matter.

CONCLUSION - PARENTS' APPEAL

The Appeal Committee concludes that the investigator did not err in her statement, "The district indicated the student had just been evaluated for special education in October during the prior school year and was not found eligible for special education and related services at that time". No corrective action is required.

The Appeal Committee concludes that the investigator did not err in her statement, "The school staff reported they were implementing supports and interventions during the first semester of the 2022-2023 school year including those recommended by Children's Mercy Hospital which were described in the Evaluation Team Report dated October 22, 2021". No corrective action is required.

The Appeal Committee concludes that the investigator did not err in her finding, "Based on the foregoing, violation of the IDEA for failure to meet child find requirements by not suspecting that this particular student with a disability was in need of specifically designed instruction and thus eligible for disciplinary protection under IDEA is not substantiated." No corrective action is required.

The Appeal Committee concludes that the investigator did not err in her finding, "Interviews and documentation found that [Administrator] shared the Documented Response to the Formal Written Complaint dated January 2, 2023, along with supporting documents with members of the school board during executive session of February 6, 2023. The supporting documentation did include the Evaluation Team Report dated October 22, 2021, which describes the initial special education evaluation and the determination of eligibility for special education." No corrective action is required.

For the reasons stated above, the committee overturns the investigators conclusion that the district failed to include the parents in the review of existing data as required by K.A.R. 91-40-8(c)(1) and 34 C.F.R. 300.305(a)(1) and (2), and removes the requirement in the report for corrective action. In all other respects, the report is sustained.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 5th day in April, 2023.

APPEAL COMMITTEE:

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Mark Ward: Attorney, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Crista Grimwood: Education Program Consultant.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229
ON FEBRUARY 16, 2023

DATE OF REPORT MARCH 17, 2023

This report is in response to a complaint filed with our office on behalf of the student by his father, The father. In the remainder of the report, the student will be referred to as "the student." The father will be referred to as "the father," "the parent," or "the complainant." The mother will be referred to as "the mother."

The complaint is against USD #229, Blue Valley Public Schools. In the remainder of the report, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #229.

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 16, 2023, and the 30-day timeline ends on March 17, 2023.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, spoke to the father by telephone on February 17, 2023, to clarify the issues in the complaint. In addition, Gwen Beegle spoke to the father on March 2, 2023, and interviewed him on March 6, 2023. Gwen Beegle interviewed Mark Schmidt USD #229 Assistant Superintendent Special Education on March 3, 2023. Gwen Beegle and Donna Wickham interviewed the following people on March 2, 2023: Kristin Venable, Principal (IVE - Indian Valley Elementary); Cindy Ray, Special Education Teacher; Carol Lujano, School Psychologist; Lauren Gore, District Special Education Administrator.

The Complaint Investigators also received emails from the parent and USD #229 between February 17, 2023, and March 6, 2023.

In completing this investigation, the Complaint Investigators reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

- ● Individualized Education Plan (IEP) for the student dated March 24, 2022, with Heggerty-Phonemic Awareness Baseline Assessment for first grade appended

- ● Email from Mark Schmidt (Assistant Superintendent Special Education, USD #229) to the father, Chris Cullinan (Special Education Administrator) and Alyssa Pengra (School Psychologist) dated April 4, 2022 at 3:38 pm.
- ● Notice of Meeting dated August 19, 2022, for a meeting on August 31, 2022 signed by the parent (undated signature)
- ● Email from Dr. Schmidt to Karen Venable (Principal, IVE - Indian Valley Elementary), Lauren Gore (Special Education Administrator), Amy Farthing (Executive Director of School Administration), and the father dated December 2, 2022 at 12:55 pm
- ● Acadience Data Management letter (undated) to parents including the student's first grade (2021-2022) Acadience Reading assessment scores
- ● Acadience Data Management letter (undated) to parents including the student's second grade (2022-2023) Acadience Reading assessment scores
- ● "Dear Parent" letter from Adam Wade, Director of Academic Achievement and Accountability, including the student's second grade (2022-2023) MAP scores dated Spring 2022-23
- ● Email from the father to Ms. Cindy Ray (Special Education Teacher), Dr. Schmidt, the mother, and Ms. Morgan Reilly (Second Grade Teacher) dated January 10, 2023, at 9:50 am.
- ● Email from Dr. Schmidt to the father, Ms. Ray, Ms. Reilly, and the mother dated January 10, 2023, at 12:02 pm.
- ● Notice of Meeting dated January 19, 2023, for meeting on February 16, 2023 signed by the parent on January 19, 2023
- ● District's "Meeting Notes [the student]" dated January 19, 2023 for the IEP Progress Update meeting held on January 19, 2023
- ● Prior Written Notice for Evaluation or Reevaluation and Request for Consent, dated January 19, 2023, and signed by the parent giving consent on January 19, 2023
- ● I-Ready scores for the student dated January 24, 2023
- ● Draft Individualized Education Plan (IEP) for the student dated February 16, 2023
- ● IEP Progress Report - Annual Goals for the student dated February 16, 2023
- ● IEP Meeting Notes dated February 16, 2023
- ● Email from the father to Kristen Venable (Principal, IVE - Indian Valley Elementary), Ms. Ray, Dr. Schmidt, Mark Ward (KSDE) and Crista Grimwood (KSDE) dated February 16, 2023, at 11:19 am.
- ● Email from Dr. Schmidt to the father dated February 16, 2023, at 12:00 pm.
- ● Prior Written Notice dated February 16, 2023, for Additions, Changes or Modifications to the Student's IEP - Material Change in Services - ESY, signed by the father without giving consent on February 24, 2023
- ● Prior Written Notice dated February 16, 2023, for Additions, Changes or Modifications to the Student's IEP - Update Goals

- ● Letter from Ms. Carol Lujano (School Psychologist) to the parents dated February 21, 2023
- ● Response to the Molina Due Process Complaint from Dr. Schmidt to the complaint investigators dated February 27, 2023, at 11:48 am.
- ● Qualifying for Extended School Year in Blue Valley 2023 (Internal Guidance Document)
- ● Blue Valley School Calendar, 2022 - 2023
- ● Email from Dr. Schmidt to the investigator dated March 6 at 12:03 pm.

Background Information

This investigation involves a nine-year-old student who is enrolled in second grade at Indian Valley Elementary in USD #229. He receives special education and related services as a child with a developmental disability per the Individuals with Disabilities Education Act (IDEA). The student previously received Part C services in the district, and he currently receives services focused on reading and language, with in-classroom special education support in the general second grade classroom, resource room services, occupational therapy consultation and speech language therapy. He is described as a pleasant and polite child who is dual language in English and Spanish. His reading achievement is delayed, and the results of his most recent assessments reported in his IEP indicate that his instructional reading level is second grade and frustration reading level is third grade, with areas of strength in vocabulary and high frequency word recognition and a weakness in phonics. Standardized testing (Acadience Reading assessment 2022-2023) shows scores that are below or well below expectations for his age and grade in phonics, oral reading, and reading comprehension. The student lives at home with his parents where Spanish is spoken as the home language. He does not have a behavioral intervention plan, nor does he have health conditions that affect his academic performance or school attendance. The student is currently being assessed for his triennial re-evaluation to determine continued eligibility, for which the parent gave consent on January 19, 2023.

> ISSUE ONE: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student FAPE by failing to offer extended school year services to a student who would otherwise qualify.

Positions of the Parties

The complainant alleged that the student continues to evidence standardized reading scores that are in the below and well below range, similar to the scores used in the past which were

listed as justification for extended school year (ESY) services during the summer of 2022. The complainant asserts that the child needs to have ESY in order to learn reading skills that are shown to be delayed by the standardized testing so that the student can make progress on his 2022-2023 IEP goals and be prepared for the third grade. The complainant also asserts that he was unable to properly participate in the ESY decision making process due to late provision of the draft IEP.

The district refuted this allegation, stating that "The IEP Team believes that [the student] will receive FAPE without ESY services. As evidenced by the IEP Progress Report - Annual Goals (2/16/2023), [the student] completed all of his IEP goals from the previous IEP. As stated in the PWN - Request for Consent (2/16/2023), the IEP Team proposed the discontinuation of ESY services because: '[the student] does not qualify for ESY. The data indicates that [the student] is not expected to significantly regress in skills or knowledge over the summer break, he does not have a significant degree of impairment, he is making progress but not in a critical stage of learning in his special education goals, nor does [the student] display significant behavioral or physical problems.' The proposal to discontinue ESY services was discussed during the annual IEP meeting held on February 16. The document labeled "OM - Annual IEP Mtg Notes - 2/16/2023" states that '[the student] no longer qualifies for ESY because he does not meet any of the criteria: a. nature and severity of disability, b. regression of skills over long breaks, c. at a critical time in the learning process.' Update: On Friday, February 24, 2023, Mr. Molina returned the PWN - ESY. He has signed 'refused consent' for this service change. The District understands that this change requires parental consent, and the District is not inclined to file for due processes."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #229.

The district reports that it follows a protocol that establishes the need for ESY by examining individual student data against three criteria pertaining to the nature and extent of the disability, whether the student has shown regression of learning during extended absences, and if the student is at a critical stage of learning. The district provided the protocol entitled "Qualifying for Extended School Year in Blue Valley" showing further detail on the measures used for each criterion.

Additionally, the district reports that it used this ESY protocol to determine if the student continued to be eligible for ESY during the 2022-23 school year, specifically reporting that the student is meeting his IEP goals through the regular school year, making progress in the general curriculum, and failed to evidence regression after a recent extended absence.

The draft IEP dated February 16, 2023 states, "The team considered the need for ESY. It has been determined there is not a need for ESY services based on the data below." The data used for this decision are not listed on the proposed IEP in the space below this statement.

The parent and the district agree that eligibility for ESY was discussed at the annual review of the student's IEP on February 16, 2023 and the district shared that according to their criteria the student did not qualify.

The IEP Meeting Notes dated February 16, 2023 show that the district stated that the student "no longer qualifies for ESY because he doesn't meet any of the criteria: nature and severity of disability, regression of skills over long breaks, at a critical time in the learning process." The district reported that the criteria for critical stage of learning was a primary consideration in recommending ESY last summer (2022) when he was finishing first grade and entering second grade and that this learning feature is not present at this time.

The district reports that it proposed an alternative summer program (Step Up) to the parent and offered transportation and financial support to offset that program's cost. The IEP Meeting Notes dated February 16, 2023 state, "Kristin Venable mentioned to Mr. Molina that there was a general education summer school program and that if payment were an issue the school could help with that."

The district reports that the father followed up with the Step Up program but was likely provided incorrect or incomplete information that contradicted the district's offer for transportation and/or financial support. They report they do not believe the father has correct information about the Step Up program purposes, transportation and available financial support.

The district reported that they sent a letter on February 21, 2023 that included electronic links to parent rights in English and in Spanish. The letter accompanied two Prior Written Notices dated February 16, 2023, one for ESY requiring parent consent for a material change in services and a second for updated IEP goals not requiring parent consent.

The parent and the district agree that, on February 24, 2023, the parent signed and returned the February 16, 2023 Prior Written Notice for Additions, Changes or Modifications to the Student's IEP - Material Change in Services for ESY giving no consent for the proposed action.

The district acknowledged the parent's decision to withhold consent for a material change in services in the IEP regarding ESY. The district reported that they will not seek due process relief to overturn the parent's decision to withhold consent for the material change in services.

Applicable Regulations and Conclusions

Two regulations stipulate the requirements for ESY in Kansas. First, K.A.R. 91-40-1, states: "Extended school year services means special education and related services that are provided

to a child with a disability under the following conditions: (1) Beyond the school term provided to nondisabled children; (2) in accordance with the child's IEP; and (3) at no cost to the parents of the child." Second, K.A.R. 91-40-3, entitled Ancillary FAPE requirements states: "(1) Each agency shall ensure that extended school year services are available as necessary to provide FAPE to a child with a disability. (2) An agency shall be required to provide extended school year services only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. (3) An agency shall neither limit extended school year services to particular categories of disability nor unilaterally limit the type, amount, or duration of those services."

Further, Kansas is within the 10th Circuit and is bound by the decisions of the 10th Circuit Court of Appeals. Johnson v. Independent School District No. 4 of Bixby, 921 F.2d 1022 (10th Cir. 1990) directs school districts to first consider whether the student's progress made during the regular school year would be jeopardized by not attending school during long school breaks using both retrospective and predictive data. Secondly, the districts must also consider additional elements, such as but not limited to: the degree of impairment, the child's rate of progress, the child's behavioral or physical problems, the availability of alternative resources, the areas of the child's curriculum that need attention, and whether the services are extraordinary for the child's condition or an integral part of a program for a similar child (Kansas Special Education Process Handbook).

The Johnson case also specifies that determining the need for ESY should be done in consultation with the parents and with collection and review of data related to the previously stated criteria. A noninclusive list of such examples includes: teacher assessments of student's success using various instructional strategies, criterion referenced and standardized assessments, past educational history, the student's IEP goals, and other measures of student performance (Kansas Special Education Process Handbook).

Additionally, districts must consider the need for ESY yearly during an annual review of the student's IEP, and ESY may or may not be provided in conjunction with a general education summer school.

In this case, the district considered the need for ESY during an annual review of the student's IEP in consultation with the student's parent. For this review, the district provided achievement and progress data related to criteria required in Kansas, which included a review of several criterion-referenced and standardized assessments in the areas affected by the child's disability, namely reading and language. The district considered the child's progress in the general education curriculum and on his IEP goals and reported that they reviewed his academic performance subsequent to a recent extended absence. The ESY criteria and the student's performance were discussed at the annual IEP meeting held on February 16, 2023. At the IEP meeting, the district compared the student's performance to the ESY qualification protocol criteria in order to determine the student's need and eligibility for ESY. The parent

was consulted and gave his point of view that ESY is a continued need for the student's reading progress.

Further, the parent has denied consent for a material change in the IEP related to ESY and the district stated that they will provide ESY for the student in the summer of 2023.

Based on the foregoing, according to IDEA and Kansas special education regulations it is *not* substantiated that the district failed to provide the student FAPE by failing to offer extended school year services to a student who would otherwise qualify.

ISSUE TWO: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent procedural safeguards and adequate notice of meetings

Positions of the Parties

The complainant alleged that emails from Dr. Schmidt did not include as attachments the procedural rights documents in English and in Spanish, as the text of the emails indicated. The complainant alleged that he did not receive important educational assessment data or adequate notice of the meetings due to sending the draft IEP home with the child instead of through certified mail.

The district responded: "The District disagrees with the second allegation. Parents received notification well in advance of the February 16, 2023, IEP meeting. In addition to the Notice of Meeting sent on January 19, 2023, by Mrs. Ray, the father received an email from the director of special education on January 10, 2023 and clarified that the district would have a pre-meeting on January 19, 2023, to review the student's progress data and the February 16, 2023, date for the IEP. The email noted that the district held the January 19th meeting and moved up the IEP meeting at the father's request. The formal Notice of Meeting was sent on January 19, 2023."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #229.

The findings of Issue One are incorporated herein by reference.

The district provided an email to the parent that included the links to or attachments of the procedural rights documents on April 4, 2022 at 3:38 pm, in response to the parent requesting a copy of the parent rights, to list decisions within Prior Written Notices provided, and to clarify

the parent's wishes for baseline data for a goal on the IEP. This occurred during the student's first grade year.

The district provided a Notice of Meeting on August 19, 2022 for a meeting on August 31, 2022 signed by the father acknowledging receipt of a copy of parent rights.

The district communicated with the father on January 10, 2023 at 12:02 pm via email to set a mutually agreed upon time for the January 19, 2023 IEP Progress Update and February 16, 2023 IEP meetings. This same email from the district to the parent provided contact information for resources to assist the parent to understand their procedural rights but did not include the attached or linked procedural safeguards document.

At the IEP Progress Update meeting held on January 19, 2023, the district reported that a paper copy of the procedural safeguards copy was offered to the parent at the January 19, 2023 IEP progress update meeting. District meeting notes show a paper copy was offered and the father indicated he already had a copy of the parent rights document that he was being offered.

At this same meeting on January 19, 2023, the Prior Written Notice for Evaluation - Reevaluation and Request for Consent dated January 19, 2023 was hand delivered and the parent acknowledged his receipt of the procedural safeguards by his signature on that document on January 19, 2023.

The district and the parent agree that the parent attended both the IEP Progress Update meeting on January 19, 2023 and the annual IEP meeting on February 16, 2023.

The district reported that they sent a letter dated February 21, 2023 to the parent by certified mail, which included electronic links to websites that provide the parent's rights in English and Spanish along with contact information for resources to assist the parents to understand the procedural safeguards. The February 21, 2023 letter accompanied two Prior Written Notices dated February 16, 2023, one for ESY requiring parent consent for a material change in services and a second for updated IEP goals not requiring parent consent.

The parent and the district agree that, on February 24, 2023, the parent signed and returned the February 16, 2023 Prior Written Notice for Additions, Changes or Modifications to the Student's IEP - Material Change in Services for ESY giving no consent for the proposed action.

Applicable Regulations and Conclusions

According to the Kansas Special Education Process Handbook, for Notice of Meeting, "The school must take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The meeting is to be scheduled at a mutually agreed upon time and place. The school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings."

According to K.A.R. 91-40-17(a)(2), a Notice of Meeting must be provided in writing at least 10 days prior to the meeting and inform the parents that their child is invited to attend the meeting. The written notice must indicate the following: (a) the purpose, (b) date, (c) time; (d) location of the meeting, (e) the titles or positions of the persons who will attend on behalf of the school and (f) the parents have a right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child. Further, the school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings.

According to K.S.A. 72-3430(e), schools are required to provide a copy of the Parent Rights in Special Education Notice to the parents at least one time in a school year and for the following specific actions: (a) upon a referral or parent request for initial evaluation, (b) upon the first formal complaint or due process complaint filed in a school year, (c) upon a disciplinary removal from school that constitutes a change in placement; and (d) upon parent request.

In this case, the district scheduled an IEP progress update meeting and IEP annual review meeting with the parent at mutually agreeable times, using email to communicate with the parent. The parent was able to attend both of these meetings with the district.

Additionally, the district provided adequate notice for the annual IEP meeting, as required. On January 19, 2023, the district provided a Notice of Meeting dated January 19, 2023 for the annual IEP meeting to be held on February 16, 2023 by giving it to the father in person. This Notice of Meeting meets the 10 day requirement for notice of a meeting to discuss the student's IEP and it includes the information required by K.A.R. 91-40-17(a)(2). The parent acknowledged receipt of this Notice of Meeting through his signature on January 19, 2023.

Further, the district met its requirement to provide a copy of the procedural safeguards document to the parent annually and at the time of a request for consent for re-evaluation. At the request of the parents, the district sent attachments of the parents' rights in English and in Spanish to the parents in an email dated April 4, 2022 at 3:38 pm. By signature on a Notice of Meeting dated August 19, 2022 and on a Prior Written Notice on January 19, 2023, the parent acknowledged receiving parents' rights documents at least twice during the school year. Additionally, on February 21, 2023, following the annual IEP meeting held on February 16, 2023, the district sent a letter through certified mail that included links to parents rights in English and Spanish.

Therefore, it is found that the district provided the parent with the parents' rights annually, upon a parental request, and when requesting a reevaluation, as required by K.S.A. 72-3430(e).

Based on the foregoing, according to IDEA and Kansas special education regulations it is *not* substantiated that the district failed to provide the parent procedural safeguards and adequate notice of meetings.

ISSUE THREE: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide student data or documentation supporting the district's decision in draft documents to allow for the parent to adequately participate in the IEP process.

Positions of the Parties

The complainant alleged that he had requested communication from the district to come to him by certified mail due to delays in receiving papers when sent home with his child from school. The complainant stated that he received the draft IEP sent home with his child without enough time to fully consider the proposed program. The complainant stated that he did not receive the data upon which the decisions were being made with enough time before the meeting so that he could fully participate in the IEP process.

The district replied that it disagrees with the third allegation. They respond that the parents received progress reports on IEP goals every 9 weeks during the school year. "The data outlined on the IEP Progress Report, which shows that [the student] has completed all his goals, supports the district decisions regarding both goals and ESY. This information was shared with parents at the IEP Meeting. In addition, the team held a pre-meeting with Mr. Molina on January 19, 2023, to review his son's data."

In addition, the district asserted that the parent was invited to provide additional input into the parent concerns on the IEP and that Dr. Schmidt acknowledged the receipt of the father's input in an email dated February 16, 2023 at noon and directed that the emailed statement should be included in the IEP.

The district also stated, "The District's position is further supported in the PWN - ESY document that was sent to parents after the IEP meeting. The PWN shows the IEP team considered proposing ESY for summer 2023, but declined to change their proposal as the student does not need ESY to make progress towards and meet his IEP goals."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #305.

The findings of Issue One and Two are incorporated herein by reference.

The parent reported previously requesting all communication from the district to be sent through certified mail at some time prior to December 2, 2022 to ensure receiving them in a timely fashion.

The district reported that they sent IEP Progress Updates during the 2022-2023 school year to the parent using certified mail. By district policy, all 9-week IEP progress updates are available via the district's electronic platform called Parent Vue.

The district reported that they believed that the parent had agreed to return to typical methods of school-home communication at a meeting between Dr. Schmidt and the parent on December 2, 2022. This meeting was held at the request of the parent to reset the relationship with the district.

The district and the parent agree that language interpreters were provided at the January 19, 2023 and February 16, 2023 meetings, as agreed at the December 2, 2022 meeting.

The district and the parent agree that the proposed (draft) IEP was sent home with the student before the annual IEP meeting on February 16, 2023. The district reports that the IEP was sent home with the student on February 13, 2023 in preparation for the meeting, and the parent reports the IEP was received on February 14, 2023. Both the parent and the district agree that the parent called the school on February 14, 2023 to ask questions about the ESY eligibility on the draft IEP.

The parent and the district agree that the ESY section on the draft IEP did not list the data used to make the decision.

The parent and the district agree that the assessments and data on the draft IEP were discussed at the February 16, 2023 meeting. The parent and the district agree that, during this meeting, the parent had opportunities to ask questions about the assessments and data included on the draft IEP including those used to determine ESY eligibility.

The parent and the district agree that the parent was given the opportunity to discuss their concerns as part of the February 16, 2023 IEP meeting. These topics included the student's reading assessment results, behavior, testing anxiety, reading characteristics similar to dyslexia, reading comprehension, and need for ESY.

The parent and the district agree that the district asked for and the parent submitted an updated statement to be included in the draft IEP by email dated February 16, 2023 at 11:19 am and confirmed by the district email on February 16, 2023 at 12:00 pm.

Applicable Regulations and Conclusions

According to the Kansas Special Education Process Handbook (p.2), "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. . . (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b),(c))". Also, "the school must make reasonable efforts to ensure that the parents understand, and have the opportunity to participate in these meetings, including arranging for an interpreter for parents with deafness, or for parents whose native language is other than English (34 C.F.R. 300.322(e))".

"One of the procedural safeguards afforded to parents is the required Prior Written Notice of certain proposed special education actions. This notice must be provided to parents within a reasonable amount of time before the date the school proposes to initiate or change the identification, evaluation, educational placement of their child, or provision of special education and related services (FAPE) to their child. Prior Written Notice is also 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))" (Kansas Special Education Process Handbook, p. 6). A reasonable length of time for Prior Written Notice to occur is within 15 days in response to a parental request.

Guidance from the Kansas State Department of Education, as published in the Kansas Special Education Process Handbook, states that a draft IEP can be developed prior to the IEP meeting, but the IEP may not be completed before the IEP meeting. When school personnel bring drafts of the IEP to the meeting, there must be a "full discussion with the IEP team, including the parents, before the child's IEP is finalized, regarding content, the child's needs and the services to be provided to meet those needs. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting for discussion (Federal Register, August 14, 2006, p. 46678)" (Kansas Special Education Process Handbook, p. 93). In addition, while the IEP team should work toward reaching a consensus, if the team cannot do so, the Local Education Agency (LEA) representative at the meeting has the authority to make a decision and to then provide parents with the appropriate notice and consent for the action, if consent is required.

In this case, the district provided the opportunity for the parent to participate in the annual meeting to update and review the IEP, to include the decision to provide ESY, and to update the IEP goals. This was accomplished by finding a mutually agreeable time for the meeting and providing adequate notice to the parent about the meeting. The district made a reasonable effort to ensure the parent understood and could participate in the meetings by providing a language interpreter. The district discussed the student's present levels of academic and functional performance with the parent, reviewing several types of assessments and their results. After the IEP meeting, the district provided separate Prior Written Notices, one for the material change of eliminating the ESY service and one for updating the IEP goals. This facilitated the parent's ability to deny consent for the material change specifically.

The district has the authority to bring a draft or proposed IEP to the meeting, which it did in this case. That proposed IEP was shared with the parent on or before February 14 in advance of the February 16, 2023 meeting. The district encourages teachers to share a copy of a proposed IEP in advance of the meeting. There is no Federal or State requirement associated with advanced sharing the proposed IEP. Instead, districts are required to provide the opportunity for a full discussion of the IEP, including the questions, concerns, and recommendations brought by the parents. Based on the IEP meeting notes and interviews of the parties, a full discussion that afforded parent participation was conducted at the meeting. The parent had the opportunity to ask questions regarding the assessments, assessment results, and the services being proposed. The parent also asked questions and challenged the need for ESY at the meeting.

Finally, the Local Education Agency representative has the authority and responsibility to make decisions when consensus cannot be reached and to provide prior written notice concerning those actions to the parents. In this case, the LEA representative invited corrections to parts of the proposed IEP and provided proper prior written notices to the parent regarding the areas of disagreement.

Based on the foregoing, according to IDEA and Kansas special education regulations it is *not* substantiated that the district failed to provide student data or documentation supporting the district's decision in draft documents to allow for the parent to adequately participate in the IEP process.

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, Ph.D.
Donna Wickham, Complaint Investigator

Gwen P. Beegle, Ph.D.
Gwen P. Beegle, 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 #434
ON FEBRUARY 20, 2023

DATE OF REPORT MARCH 22, 2023

This report is in response to a complaint filed with our office on behalf of the student by his mother, The parent. In the remainder of the report, the student will be referred to as "the student" and The parent will be referred to as "the mother", "the parent", or "the complainant".

The complaint is against USD #434, Santa Fe Trail Public Schools. USD #434 contracts with the Three Lakes Educational Cooperative (TLEC) to provide special education and related services to students in the district. In the remainder of the report, "USD #434," "the "school," the "district", and the "local education agency (LEA)" shall refer to these responsible public agencies.

The Kansas State Department of Education (KSDE) allows approximately 30 days to complete the investigation of a child complaint and issue a report from the date a complaint is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 20, 2023 and the investigation report is being issued on March 22, 2023.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the complainant by telephone on February 24, 2023 to clarify the issues of the complaint. The Complaint Investigator interviewed the mother by telephone on February 17, 2023.

USD #434 made the following school district staff available for telephone interview on March 9, 2023:

- Caroline Green, Director of Special Education
- Faith Flory, Deputy Superintendent
- Austin Hershberger, Assistant Principal
- Jody Testa, Principal
- Michelle Heiman, Teacher Mentor / Special Education Coordinator
- Amanda Lattimer, Sixth Grade Social Studies Teacher
- Cyndee Washington, Sixth Grade Science Teacher

- Ali Vandevord, Sixth Grade Math Teacher
- Melanie Wallace, 6th Grade English Language Arts Teacher

In completing this investigation, the Complaint Investigator reviewed the following resources and documentation provided by the complainants and the district:

- Reevaluation Eligibility Report dated January 14, 2022
- Individualized Education Program (IEP) dated January 14, 2022
- IEP dated January 14, 2022 and amended on August 5, 2022
- Email written by Cyndee Washington, Sixth Grade Science Teacher, to the parent dated September 13, 2022 at 2:19 p.m.
- Email written by the parent to Ms. Washington; Michelle Heiman, Mentor Teacher / Special Education Coordinator; and Jodi Testa, Principal; dated September 13, 2022 at 4:49 p.m.
- Email written by Ms. Heiman to the parent dated September 14, 2022 at 1:31 p.m.
- Email written by Ali Vandevord, Sixth Grade Math Teacher, to the parent on September 28, 2022 at 3:37 p.m.
- Parent's notes of a meeting with Ms. Testa, and Austin Hershberger, Assistant Principal, dated September 29, 2022
- Email written by the parent to Jim Lentz, Superintendent, dated October 5, 2022 at 11:39 a.m.
- IEP dated January 14, 2022 and amended again on October 10, 2022
- Children's Mercy Hospital Neuropsychological Report written by Amanda Strasser, Ph.D. and Paul Glasier, Ph.D., ABPP, Board Certified in Clinical Neuropsychology, dated December 1, 2022
- Emails between Kelly Courtney, Physical Therapist at TLEC, and the parent dated December 5, 2022 at 10:06 a.m., 11:29 a.m., 11:38 a.m., and 6:44 p.m.
- Letter of Medical Necessity for a Paraprofessional written by Thuy-Tien Dang, APRN, FNP-C at Pediatric Physical Medicine and Rehabilitation Clinic at Children's Mercy Hospital dated December 7, 2022
- Emails between Ms. Courtney and the parent dated December 8, 2022 at 12:34 p.m., 2:37 p.m., 3:30 p.m., and 3:37 p.m.
- Email written by the parent to Ms. Heiman dated December 8, 2022 at 2:43 p.m.
- Email written by Ms. Heiman to the parent on December 12, 2022 at 10:20 a.m.
- Staffing Record dated December 19, 2022
- Office Behavior Referral dated January 6, 2023
- Email written by the parent to Ms. Testa dated January 9, 2023 at 9:38 a.m.
- IEP dated January 10, 2023

- Prior Written Notice (PWN) for Identification, Initial Services, Educational Placement, Change in Services, Change of Placement, and Request for Consent dated January 10, 2023
- Staffing Record dated January 10, 2023
- Office Behavior Referral dated January 24, 2023
- Email written by the parent to Ms. Heiman dated January 26, 2023 at 11:37 a.m.
- Email written by Dodie Greenfield, School Nurse, to the parent dated January 26, 2023 at 3:34 p.m.
- Email written by Ms. Heiman to the parent dated January 27, 2023 at 11:43 a.m.
- Email written by the parent to Ms. Heiman dated January 30, 2023 at 8:24 a.m.
- Emails between the parent and Amanda Lattimer, Sixth Grade Social Studies Teacher dated February 2, 2023 at 8:07 p.m. and 8:16 p.m.
- Teachers' Communication Log dated February 13, 2023 through March 8, 2023
- Office Behavior Referral dated February 13, 2023
- Emails between the parent and Melanie Wallace, Sixth Grade English Language Arts Teacher date February 14, 2023 at 5:53 p.m. and February 15, 2023 at 12:14 p.m.
- Email written by the parent to Mr. Lentz, dated February 15, 2023 at 10:01 a.m.
- Pacing Guide and Assignments for reading assignments in Ms. Wallace's class dated between February 22, 2022 and March 9, 2022
- Proposal to Resolve the Complaint written by Caroline Green, Director of Special Education, to Crista Grimwood, Education Program Consultant at KSDE, dated March 2, 2023
- IEP dated January 10, 2023 with proposed amendment dated March 10, 2023
- PWN dated March 10, 2023
- The 2022-23 School Year Calendar for USD #434

Note that emails and documentation related to other issues that occurred during the 2021- 22 and 2022-23 school years were also reviewed and considered as background information.

Background Information

This investigation involves a twelve-year-old student currently enrolled in the sixth grade at the Carbondale Attendance Center in USD #434. The student was initially evaluated and found eligible under the exceptionality categories of Specific Learning Disability and Orthopedic Impairment on March 28, 2018 while in the first grade. The most recent reevaluation with additional assessments in the areas of motor and academics was conducted in fifth grade on January 14, 2022. Testing showed that he is currently reading near the second grade level. It was determined that he continued to be eligible for special education and related services

The student is diagnosed with Myofibrillar Myopathy type 6 and is followed regularly at Children's Mercy Hospital. Information from Children's Mercy Hospital states:

> This is a rare disorder characterized by toe walking in early childhood with rapidly progressive muscle weakness starting in late childhood. Individuals with this kind of myofibrillar myopathy may have facial or neck weakness, develop respiratory insufficiency, cardiomyopathy, and skeletal deformities (joint contractures, scoliosis, rigid spine) related to muscle weakness. Most patients are severely affected by the second decade and need cardiac transplant, ventilation, and/or a wheelchair. There may also be peripheral neuropathy and sensory involvement. Currently, there is no cure for BAG3-related disorders and treatment is supportive.

A neuropsychological evaluation was completed at Children's Mercy Hospital on December 1, 2022 and the parent shared its recommendations with USD 434 in an email dated December 8, 2022. The district responded by sharing the information with the IEP team and then reviewing the information and considering the recommendations at IEP team meetings held on December 19, 2022 and January 10, 2023 for the purpose of reviewing and revising the student's 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 parents raised two issues that were investigated.

> ISSUE ONE: The USD #434, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the 2022-23 school year, specifically the accommodations for providing copies of teacher notes; frequent breaks and positive reinforcement; extra cues and prompts/repetition of directions; and access to headphones, audiobooks, and text-to-speech software.

Positions of the Parties

The parent reported the student's sixth grade general education teachers did not regularly provide the accommodations listed in the student's IEPs during the 2022-23 school year. She indicated her concerns about this issue were shared on multiple occasions with the teachers and building administration, the special education cooperative administration, and the USD #434 superintendent. Each time, she was assured the IEP accommodations will be provided; however, she discovered this was not the case when the student is either injured while at school or is disciplined because an accommodation is not provided.

The parent believes the district is penalizing the student for the teachers not implementing the IEP and providing the necessary accommodations when needed or when requested by the student. When accommodations are not provided, the student becomes frustrated and "shuts down" which ultimately results in behavioral issues in the classroom. The student is then disciplined and loses "behavior points" which will make it almost impossible for the student to earn the required amount of points to attend an end-of-year field trip.

The district indicated the accommodations listed in the student's IEP were "provided on a fairly consistent basis." School staff acknowledged two specific instances when the required accommodations were not provided.

The first instance occurred at the end of January 2023 when the student had been absent from school. When he returned, he requested a copy of the social studies teacher's notes from the time that he had missed. She did not provide copies but instead told him to get a copy of one of the other student's notes since they were only fill-in-the-blank notes.

The second instance occurred on February 13, 2023 when a substitute teacher was teaching the English Language Arts class. The student requested to use the headphones so that he could listen to the reading passage but the substitute refused his request, which resulted in the student becoming frustrated and being rude to the substitute teacher. The student was ultimately disciplined and docked behavior points.

The district indicated it has held several IEP team meetings to review and clarify the required accommodations with the general education teachers during the 2022-23 school year. The district is also planning to conduct training for all of the general educators and special educators at the Carbondale Attendance Center regarding the implementation of IEP accommodations by the end of the 2022-23 school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #434.

There have been three IEPs in effect for the student during the 2022-23 school year. The first IEP was in effect starting August 18, 2022 through October 10, 2022. It was developed on January 14, 2022 and amended on August 5, 2022. This IEP required the following accommodations be provided for the student:

- Preferential seating in the general and special education classrooms in order to reduce distractibility and close monitoring of the teacher to ensure he is able to read/comprehend
- Allow additional time for reading in general and special education settings if he uses his time wisely during group and independent reading activities.
- Extra cues and prompts to reduce distractibility and enhance productivity in the classroom setting
- Read text aloud or use text-to-speech
- Shortened assignments to reduce frustration /stress during reading, spelling, or activities
- Additional time to transition between classes, use of elevator, and breaks for fatigue

The second IEP was in effect October 10, 2022 through January 10, 2023. This IEP included all of the accommodations from the previous IEP and added the following accommodation:

- Separate, quiet, or individual setting to complete independent work for Reading, Math, Writing, Science, and Social Studies to decrease distractions and provide more individualized support as often as needed

The third IEP in effect during the 2022-23 school year was developed on January 10, 2023. This IEP required the following accommodations be provided in the general and special education settings:

- Instructional Accommodations
    - Additional time
    - Separate / quiet / individual setting
    - Redirection and reminders
    - Extra cues and prompts
    - Frequent / immediate feedback
    - Scribe
    - Repetition of directions
    - Provide student with copy of notes
    - Read text aloud to student
    - Reduce paper/pencil tasks
    - Additional time for transitions (in all settings (including non-academic)
- Program Accommodations
    - Altered/modified assignments /assessments
    - Chunk assignments/assessments

    - Limit amount of required reading
    - Spelling not penalized
- Social/Emotional Accommodations
    - Check for understanding
    - Positive reinforcement (verbal and non-verbal)
    - Preferential locker
    - Preferential seating
    - Fidgets
    - Headphones
    - Frequent breaks
    - No penalty due to medical appointments / breaks

The district acknowledged and interview and documentation show that the required accommodations for copies of notes and use of headphones were not provided on at least two separate occasions as noted previously.

An email exchange between the mother and Ms. Lattimer on February 2, 2023 noted that the student was not provided with copies of the notes by either a student or the teacher. Ms. Lattimer stated, "I did ask the student to get a copy of the notes from a peer at the table to fill in the missing parts. I did not realize that he did not get those. I will be sure he has those tomorrow morning."

The Office Behavior Referral dated February 13, 2023 noted that the substitute teacher from Mrs. Wallace's classroom sent the student to the office "for, getting headphones that weren't needed." This form notes, "This drops the student 4 points for the Reward Trip – Parents will need to know."

The parent reported that she spoke to the assistant principal, Mr. Hershberger, on February 14, 2023 regarding this office referral. She was informed the student would not be able to go to the awards trip due to his disrespect to a substitute teacher; however, he could earn the trip back by choosing to eat lunch separate from his peers. The mother stated:

> The student went to get headphones and was told he did not need them, the student was reported to be disrespectful. I asked Austin [Mr. Hershberger] if the subs were aware of the student's modifications and accommodations, Austin stated there was a book that goes over any needs of each child . . . I called the student to see what happened from his point of view. The student said they had a reading assignment and he wanted to use the text to read option so he went to get the headphones so it would not disrupt the other kids in the classroom. The teacher told him the other kids do not need the headphones so he does not either. The student got mad and the teacher sent him to the office. He then

> went to Mr. Hendee's room and finished the assignment with the headphones on.

In addition, the parent reported multiple instances when the student was questioned by his general education teachers when he requested to go to the special education classroom to complete his independent work. The mother sent an email to Ms. Heiman on January 30, 2023 which stated:

> The student has mentioned that in a particular class he had requested help from a teacher to help with his assignment. The student was told he would need to try and figure it out himself and when the student asked to go to Mr. Hendee [the special education teacher] for help with the assignment he was denied and asked from the teacher 'what do you even do down there?'

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.

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(4) require school districts to include a statement of the individualized program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual IEP goals; to be involved in an make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.

In this case, the parent alleged USD #434 failed to provide the accommodations required by the student's IEPs during the 2022-23 school year. The parent specifically reported three of the accommodations included in the January 10, 2023 IEP were not provided. Documentation and interviews support the parent's position in regards to the student being provided copies of notes, using headphones for reading assignments, and completing independent assignments in a separate setting.

Based on the foregoing, a violation of the IDEA requirements for implementing the student's IEP, specifically the accommodations, ***is*** substantiated.

Issue Two:

ISSUE TWO: The USD #434, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to the parent's request for a paraprofessional and home/school communication during the past 12 months.

Positions of the Parties

The complainant reported that she requested a paraprofessional be assigned to the student for safety reasons due to his medical diagnosis in numerous phone calls and emails to USD #434 staff during the past 12 months; however, these requests have never been acted upon. The mother indicated the district has refused to provide this extra support which has resulted in the student being injured when he fell while at school. The mother noted that when this incident occurred, she was not informed and only learned that the student's wrist had been fractured after taking the student to the emergency room that same evening. She is upset that the district has still not responded to her requests for paraprofessional support and a communication plan in a timely manner.

The district acknowledged the student was injured when he fell in the PE class but that medical care was provided by the school nurse. The student was checked on throughout the school day and provided ice packs when he complained of his wrist hurting. The district noted that the parent did request a paraprofessional be assigned to help the student transition throughout the school building via wheelchair; however, this was not necessary because his peers were able to assist the student by pushing his wheelchair in the hallways during transition times. The district noted that several IEP team meetings have been held to address concerns since the parent provided additional medical documentation at the beginning of December, 2022, the most recent meeting being held on March 10, 2023.

USD #434 acknowledged that appropriate prior written notice (PWN) refusing her requests for a paraprofessional were not provided during the 2022-23 school year and that plans are in place to provide professional development on this topic with all special education staff.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #434.

Documentation and interviews found the student fractured his wrist from a fall in the PE class on September 28, 2022. The mother reported that she went to speak to the school in regards to what happened and why she was not notified and stated:

> I spoke with Ms. Testa and Mr. Hershberger in regards to the incident and special accommodations due the student's physical limitations prior to this incident and now that he is unable to use his right hand and will be utilizing his wheelchair to help minimize the risks of falls. Ms. Testa asked if we had a doctor's note in regards to him not being able to use his hand. I had to show her he was wrapped from fingertips to elbow and could not use both hands to maneuver his wheelchair. She suggested having another student push the student in the wheelchair, which I do not agree with. The school keeps trying to have other kids help my son when I feel this is an adult aid needed task. I made the request since 09/2021 that any falls or incidents be reported to me so I could document this for his medical team.

The district acknowledged and the documentation and interviews found the parent made multiple requests for paraprofessional support for the student as far back as March 17, 2022 and that the district did not provide a paraprofessional for the student based on these requests.

On December 8, 2022, the mother sent an email to Ms. Heiman that stated:

> I had requested a paraprofessional in the past to help assist my son throughout the school day but the request had been denied. I have attached a letter of medical necessity for a paraprofessional and would like this added to the student's IEP plan. I know we have a meeting on the 20th but feel this needs to be implemented sooner than later.

A copy of the letter of necessity dated December 7, 2022 from the nurse practitioner in the Pediatric Physical Medicine and Rehabilitation Clinic at Children's Mercy Hospital was attached to the email. The letter stated:

> The student has had increased muscle weakness and declined in walking. He is tired easily, has low energy and endurance. Currently he crawls around at home and mainly uses wheels in community and school. His walking is limited to very short distances, it's difficult for him to walk due to severe ankle contractures, walking on high toes causing severe pain. He is at high risk for falls and injury. He is in the process to schedule ankle surgery. With limitation of mobility, it is a medical necessity for him to have a para to help him with mobility within school and supervise him when he is going to the restroom to prevent falls, injury, long hospitalization and missing school.

Ms. Heiman responded by email on December 9, 2022 indicating that she was working with administration and team members to address the parent's concerns. She followed up with an email to the mother on December 12, 2022 stating:

> I just wanted to update you on what we are doing right now to help address your concerns. I have reviewed the portion of the Neurological evaluation that you shared with us and I am working on entering the accommodation and modification recommendations into the IEP. Jody [Ms. Testa] is ensuring that the student's teachers have a copy of the results so they can read through them and have a good understanding of the results. I have reached out to our Occupational Therapist and shared the report regarding his fine motor needs and the fatigue he may be having. We are looking at the bathroom facilities and other areas in the school he accesses as well as the structure of his day to determine options for reducing fatigue throughout his day and ensuring his continued safety . . . Kelly Courtney, our Physical Therapist, has shared with us her findings on her visit with the student last week as was please that he maintained good strength and the ability to move around the school by walking and using his wheelchair. I will look forward to meeting as a team next Tuesday morning at 7:45 to discuss everything further.

Documentation and interview found that an IEP team meeting was held on December 19, 202 with written input from the student's general education teachers. Following the meeting, the following recommendations were made: 1) reschedule the meeting "so that general education teachers can participate" 2) Continue special education and related services at current levels, and 3) include additional accommodations/modifications recommended from the medical reports.

Another IEP team meeting was held on January 10, 2023 with Ms. Washington, Ms. Lattimer, and Ms. Wallace, his general education teachers, in attendance. As a result of this IEP team meeting, the parent was provided with PWN proposing an increase in special education support from 25 minutes daily for reading to 81 minutes per day for reading, work completion, and breaks as well as continuing the 75 minutes daily of inclusion support in English, science, and social studies classes. The PWN noted that it is "important for the student to have inclusion support for independent work times in Language Arts, Science, and Social Studies". However, the PWN did not specifically address the mother's request for a paraprofessional. The mother provided written consent for the proposed changes on January 19, 2023.

Following the filing of this complaint on February 20, 2023, Mr. Lenz, Ms. Testa, and Ms. Green met with the complainant regarding her concerns on February 27, 2023. On March 1, 2023, the Three Lakes Advisory Team reviewed how to document parent requests and to follow-up with appropriate written responses in a timely manner. In addition, USD #434 is planning to

provide both general and special education staff at Carbondale Attendance Center with professional development in regards to responding appropriately to parent requests for IEP services.

USD #434 indicated the parent's requests for a paraprofessional and clarification for the method and frequency of communication were specifically discussed at the March 10, 2023 IEP team meeting. The mother confirmed these issues were discussed at this IEP team meeting and that USD #434 had provided her with a draft copy of the IEP and a PWN proposing the following changes to the student's current IEP:

- Increase daily inclusion support in the general education setting from 75 minutes daily to 216 minutes daily for Math, English, Science and Social Studies
- Add 30 minutes per week of social work services to address a new social/emotional goal
- Provide annual professional development to staff working with the student regarding his accommodations and responding to parent requests
- Use a Substitute Binder that includes all accommodations and the contact information of special education case manager and back-up staff
- Added clarifying details to the accommodations, modifications and assistive technology
- Assigning a staff member to push the student's wheelchair in the school setting when he needs assistance
- Added communication from the school nurse on the same day via phone call or email regarding any visit to the nurse's office

The mother indicated that she has not yet provided written consent for the material change in services proposed in the PWN.

Applicable Regulations and Conclusions

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. In Kansas, 15 school days is considered a "reasonable amount of time" by the Kansas Department of Education.

In this case, the parent's first concern was related to not being informed when the student fell at school on September 28, 2022 causing injury to his wrist. The mother indicated that she had previously requested to be contacted when the student had any accident at school in September 2021 in order to keep his health team up-to-date regarding balance and endurance. However, it is unclear if this was an IEP team meeting or a parent/staff conference; regardless, this date falls beyond the 12 months allowed for the investigation of allegations. Unless specified in the IEP, staff communication with parents regarding health issues is

governed by state, local and school board policies, procedures, and practices. Contact with the parent for visits to the nurse was not required by any of the IEPs in effect during the 2022-23 school year until March 10, 2023.

However, interviews and documentation support a finding that the parent requested paraprofessional support on multiple occasions during the past 12 months and that USD #434 failed to respond appropriately to the parent's request for paraprofessional support. The district acknowledged concerns with current practices related to responding to parent requests and proposed providing professional development for the TLEC staff as well as the staff at Carbondale Attendance Center during the 2022-23 school year.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to respond to parent requests during the 2022-23 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 implementing the IDEA 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, interviews and documentation found the USD #434 failed to implement the individualized accommodations required by the student's IEP, specifically for providing copies of notes, using headphones for reading assignments, and completing independent assignments in a separate setting during the 2022-23 school year.

B. 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, interviews and documentation found that USD #434 failed to respond appropriately to multiple parent requests for a paraprofessional as far back as March 17, 2022. It is noted that while USD #434 did respond to the parent's most request for a paraprofessional for safety/mobility on December 8, 2022 within 15-school days of the request, the PWN did not specifically address the parent's request for a paraprofessional,

instead adding additional supports in the special education classroom from 25 minutes per day to 81 minutes per school day.

Based on the foregoing, USD #434 is directed to take the following actions:

1) Within 30 calendar days of the date of this report, USD #434 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 IDEA at 34 C.F.R. 300.323(c)(2) and state regulation implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) which both 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 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.
2) No later than May 15, 2023, USD #434 shall conduct a training for the special education staff, school psychologist, social worker, and administrators at the Carbondale Attendance Center regarding the IDEA requirements related to individualized accommodations and modifications for students with disabilities and the duty to implement them as specified in an IEP. In addition, this training will include the requirements for responding appropriately to a parent request. No later than five days after the completion of the training, USD #434 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 #434 will provide SETS with any handouts and/or a copy of the presentation.
3) No later than April 1, 2023, USD #434 shall review the student's discipline record to ascertain when point were deducted based on any incident where the antecedent was the failure of school staff to provide the accommodations listed in the IEP in effect at the time of the incident including, but not limited to, February 13, 2023 . All of these discipline points shall be returned to the student's account for earning the award trip on April 19, 2023.
4) No individual corrective action is ordered regarding the failure to respond appropriately to the parent's request for a paraprofessional in light of the IEP team meeting held on March 10, 2023 and the subsequent draft IEP and PWN which address the parent's request for a paraprofessional and a communication system.

5) Further, USD #434 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) as described below.

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, M.Ed., 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 #413
ON FEBRUARY 15, 2023

DATE OF REPORT MARCH 23, 2023

This report is in response to a complaint filed with our office on behalf of the child by her mother, The mother. In the remainder of the report, the child will be referred to as "student 1" and The mother will be referred to as "the mother", "the parent", or "the complainant".

The complainant also made allegations regarding all of the other students in Student 1's special education classroom as well. The chart below includes the names of these students and how they will be referred to in the remainder of the report:

Name	Referred to as . . .
[redacted]	Student 2
[redacted]	Student 3
[redacted]	Student 4
[redacted]	Student 5
[redacted]	Student 6
[redacted]	Student 7
[redacted]	Student 8
[redacted]	Student 9
[redacted]	Student 10
[redacted]	Student 11

The complaint is against USD #413 (Chanute Public Schools) who contracts with USD #603 (ANW Special Education Interlocal) to provide special education services to students in the district. In the remainder of the report, "USD #413," "the "school," the "district", and the "local education agency (LEA)" shall refer to both of these responsible public agencies.

The Kansas State Department of Education (KSDE) allows approximately 30-days to complete the investigation of a child complaint and issue a report from the data a complaint is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 15, 2023 and the timeline was extended until March 23, 2023 because the district was on spring break for a week during the investigation and was unable to respond to additional questions and requests for documentation in a timely manner.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the mother by telephone on February 17, 2023 to clarify the issues of the complaint. The mother was interviewed again by telephone on March 10, 2023.

The mother requested and provided written consent for Paige Boydston, PhD,BCBA-D, to be interviewed during the investigation. Ms. Boydston is the student's autism consultant from Integrated Behavioral Technologies and has worked with the student since 2014. She was interviewed on March 7, 2023.

USD #413 made the following administrative staff available for a telephone interview on March 9, 2023:

- Korenne Wolken, Director of ANW Special Education Interlocal
- Don Epps, Principal of Royster Middle School
- Kathy Blair, Special Education Teacher
- Kayla Chancey, Paraprofessional
- Jerika Hare, Paraprofessional
- Jordan Hevel, Coordinator for ANW Special Education Interlocal
- Matt Koester, Assistant Superintendent

In completing this investigation, the Complaint Investigator relied on the following documentation provided by the complainants and the district in making findings and conclusion:

- Functional Behavioral Assessment (FBA) completed by Integrated Behavioral Technologies, Inc. dated October 2021
- TASN observation of Student 1 dated October 14, 2022
- TASN Technical Assistance Action Plan for Student 1 dated October 17, 2022
- Classroom Zoning Resource provided by TASN
- Classroom Zoning Schedule
- Function based Intervention Chart provided by TASN
- Daily Schedule for all of the students in the special education classroom (2022-23)
- Individualized Education Plan (IEP) for student 1 dated November 2, 2022 and amended on December 8, 2022
- IEP for student 2 dated December 12, 2022
- IEP for student 3 dated October 27, 2022
- IEP for student 4 dated January 12, 2023
- IEP for student 5 dated March 28, 2022 and amended on December 2, 2022
- IEP for student 6 dated November 14, 2022
- IEP for student 7 dated March 23, 2022
- IEP for student 8 dated April 20, 2022

- IEP for student 9 dated October 26, 2022
- IEP for student 10 dated October 5, 2022
- IEP for student 11 dated December 14, 2022
- Email written by Korenne Wolken, Director of ANW Special Education Interlocal, to the school team on February 20, 2023 at 11:23 p.m.
- Response to the Allegation dated March 1, 2023 written by Ms. Wolken
- Summary Chart of Special Education Services required for all of the students in the special education classroom (2022-23)
- Summary Chart of Discrepancies between the IEP and the Schedule (2022-23)
- Daily Schedules for staff in the special education classroom (2022-23)
- Summary Chart of Behavior Data Sheets for Student 1 showing dates general education support was not provided (2022-23)
- 2022-23 School Year Calendar for USD #413
- Response to Investigator's Questions written by Ms. Wolken dated March 20, 2023

Background Information

This investigation involves eleven students who are currently enrolled at Royster Middle School in sixth through eighth grades in USD #413. Each student has an Individualized Education Plan and spends some part of their school day in Kathy Blair's self-contained special education classroom. This classroom focuses on a functional curriculum for students with exceptionalities including intellectual and multiple disabilities.

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 one issue that was investigated.

> ISSUE ONE: The USD #413, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide paraprofessional support to the students in Ms. Blair's special education classroom as required by each student's IEP during the 2022-23 school year.

Positions of the Parties

The complainant alleged USD #413 failed to provide the paraprofessional support required by student 1's IEP resulting in a decrease in access to the general education curriculum and integration opportunities with her same-age peers. The complainant believes this lack of services was the result of a staffing shortage and that the other ten students in Ms. Blair's special education classroom were also impacted negatively by this lack of appropriate staffing.

The district acknowledged that there were multiple days during the 2022-23 school year when the assigned paraprofessional was gone and Ms. Blair did not request a substitute paraprofessional. This impacted student 1 because she was then unable to attend her assigned general education classes with paraprofessional support. USD #413 reported that since this concern was brought to the attention of school administrators, a new procedure has been instituted to ensure that the paraprofessional position is covered on days when a paraprofessional will be away from the school building.

Based upon an internal investigation into this complaint, USD #413 reported that the staffing shortage on these particular days did not impact the provision of special education services and support for the other ten students in Ms. Blair's classroom. However, that internal investigation revealed several other issues related to IEP implementation procedures for the students in Ms. Blair's classroom at Royster Middle School that the district is now addressing and correcting.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #413.

The following chart describes the IEPs in place during the 2022-23 school year specifically in regards to paraprofessional support for the 11 students in Ms. Blair's special education classroom at Royster Middle School:

Student	IEP in effect on 8/17/22	Amount of paraprofessional support	Date of IEP review or amendment	Amount of paraprofessional support
Student 1	11/9/21	Para support in general education Math, Social Studies and electives	11/2/22 Amended Annual IEP 12/8/22	Para support in general education Math, Social Studies and electives; Access to Attendant Care

Student	IEP in effect on 8/17/22	Amount of paraprofessional support	Date of IEP review or amendment	Amount of paraprofessional support
Student 2	12/13/21	Para support in electives and PE	12/2/22	Para support in electives and PE
Student 3	11/4/21	Attendant Care during lunch Para support in specials classes	10/27/22	Para support in specials classes
Student 4	1/25/22	Para support in electives	1/12/23	Para support in electives
Student 5	3/28/22	None	Amended 12/2/22	None
Student 6	11/23/21	Para support in electives Access to Attendant Care	11/14/22	Access to Attendant Care
Student 7	3/23/22	Para support in specials classes; Access to Attendant Care	n/a	n/a
Student 8	Transferred with IEP dated 4/20/22	None	n/a	n/a
Student 9	10/27/21	Para support in electives	10/26/22	Para support in electives
Student 10	10/11/21 Amended 8/16/22	Access to Attendant Care	10/5/22	Para support in electives
Student 11	Transferred with IEP dated 9/1/22	Access to Attendant Care	12/14/22	Access to Attendant Care

Beginning on November 2, 2022, student 1's IEP required para support for 260 minutes for 1-day per week, 300 minutes for 2-days per week and 330 minutes for 2-day per week. The district acknowledged, and the documentation and interviews found, that a paraprofessional was unavailable to provide the required paraprofessional support to student 1 in the general education setting as required by the IEP in effect on the specific dates noted below. On these dates, the student remained in Ms. Blair's special education classroom due to staff absences:

- November 7, 14, 15, 16, and 22, 2022
- December 8, 2022
- January 5, 19, 20, 23, and 26, 2023

USD #413 reported and documentation confirmed that three additional students were not provided the paraprofessional support required by the current IEP during the 2022-23 school year as noted below:

- Student 2's IEP required para support for all electives but this student is now able to attend the Family/Consumer Science class without support. USD #413 acknowledged the student's IEP was not implemented as written and that an IEP team meeting needs to be reconvened to consider changing his IEP services.
- Student 4's IEP required para support in all electives; however, the student is attending the Art class independently. USD #413 acknowledged the student's IEP was not implemented as written and that an IEP team meeting needs to be reconvened to consider changing his IEP services.
- Student 9's IEP para support in all electives; however, the student is attending the Art class independently. USD #413 acknowledged the student's IEP was not implemented as written and that an IEP team meeting required needs to be reconvened to consider changing his IEP services

Through an internal audit, USD #413 found and self-reported that the IEPs of several additional students were not being implemented as written as noted below:

- Student 5 is currently provided with access to attendant care; however, his IEP does not reflect this support.
- Student 7's IEP is written for him to be enrolled in a general education elective class; however, the student's current schedule does not include a general education electives class.
- Student 8's IEP is written to reflect a 4-day school week from the previous school district while USD #413 operates on a 5-day school week.

An email written by Ms. Wolken on February 20, 2023 was sent to the staff and administrators at Royster Middle School and ANW Special Education Interlocal to update the substitute procedure in order to ensure students had access to their general education inclusion opportunities. The email stated:

> I know we have had some recent staffing changes that hopefully will allow for some additional help in Mrs. Blair's program, but I also wanted to make sure we were doing what we needed to in order to ensure adequate service are being provided to students in the event of an absence.
>
> If a para is absent from Mrs. Blair's program, we will request a substitute through Frontline. Mrs. Blair will fill in for the para who is absent and the substitute will fill in for Mrs. Blair. When this occurs, I will need an email from Mrs. Blair so I can verify with our payroll dept. when there will not be an absence report from Mrs.

> Blair to reconcile with . . . We need to ensure that the most trained staff are serving the most involved students . . . If we need to get a sub for a day or two so current staff can shadow some of their colleagues to better familiarize themselves with a student's program, please let me know what day you can get a sub and I will make sure it is approved.

The USD #413 staff reported that another special education teacher and a "floating" para were added as staff in Ms. Blair's classroom starting on February 22, 2023 to provide additional special education services and support for the eleven students.

Ms. Wolken reported that the IEP amendments for students 2, 4, 5, 7, 8, and 9 were discussed with Ms. Blair on March 10, 2023. The district was on spring break beginning on March 13 through March 17, 2023. Ms. Blair will be in contact with these parents to discuss amendments to these IEPs beginning March 20, 2023 with the expectation that all of these IEPs are updated with parent input no later than March 31, 2023.

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.

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. In addition, federal regulations at 34 C.F.R. 300.324(a)(4), states that in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

In addition, 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. In Kansas, 15 school days is considered a "reasonable amount of time" by the Department of Education.

In this case, USD #413 acknowledged, and interviews and documentation found, that student 1 was not provided with an average of 61 minutes per day of paraprofessional support for a total of eleven days during the 2022-23 school year.

Students 2, 4, and 9 are now attending an elective class independently; however, these students' IEPs have not been reviewed and revised to reflect this progress nor have parents been provided with appropriate prior written notice for the change in services.

USD #413 self-reported that students 5, 7, and 8 have IEPs that are not being implemented as written and that all of these IEPs have not been reviewed and revised to reflect the changes nor have parents been provided with appropriate prior written notice for the change in services.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to implement the seven students' Individualized Education Plans (IEPs) as written during the 2022-23 school year. In addition, USD #413 failed to follow the appropriate procedures to review and revise, if necessary, the IEPs of six students and to provide the parents of these student's with appropriate prior written notice proposing a change in services.

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. 300.323(c)(2) and state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) 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 this case, interviews and documentation found the USD #413 failed to provide the paraprofessional support for student 1 for an average of 61 minutes per day for 11-days during the 2022-23 school year resulting in student 1 not receiving approximately 11-hours of specialized instruction required by the November 2, 2022 IEP amendment and the December 8, 2022 annual IEP. In addition, students 2, 4, and 9 are now attending an elective class independently and the required paraprofessional support has not been provided. Finally students 5, 7, and 8 have IEPs that are not being implemented as written and thus, are not receiving the required special education services and supports required by the current IEPs.

B. 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. In addition, federal regulations at 34 C.F.R. 300.324(a)(4), states that in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

In this case, students 2, 4, and 9 are now attending an elective class independently but their IEPs have not been reviewed and revised to reflect this progress. Finally students 5, 7, and 8 have IEPs that are not being implemented as written and that all of these IEPs have not been reviewed and revised to reflect the changes already made.

C. 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, interviews and documentation found USD #413 made changes to the IEPs of students 2, 4, 5, 7, 8, and 9 during the 2022-23 school year without providing the parents of these students with appropriate prior written notice.

Based on the foregoing, USD #413 is directed to take the following actions:

1) Within 30 calendar days of the date of this report, USD #413 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 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) 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.
   b) Comply with federal regulations implementing the IDEA Federal regulations at 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 as well as federal regulations at 34 C.F.R. 300.324(a)(4), which states that in making

changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

c) Comply with 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.

2) USD #413 shall reconvene student 1's IEP team no later than April 14, 2023 and will offer a minimum of 11 hours of compensatory special education staff services in the general education setting as described in the December 8, 2022 IEP to the parents in order to provide a free appropriate public education (FAPE) to the student. USD #413 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' 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.

3) USD #413 shall review and revise, if appropriate, the IEPs of students 2, 4, 5, 7, 8. And 9 and provide the parents with appropriate PWN of any agreed upon changes no later than April 14, 2023. USD #413 shall provide SETS with copies of each of these students' IEP team meeting notes and any IEP amendments or PWN resulting from each of these meetings no later than April 30, 2023.

4) It is noted that no additional systemic correction is ordered because USD #413 has already added additional staff to provide special education and support services for the students in Ms. Blair's classroom as well as revised the substitute procedures for staff absences from this program in response to their self-monitoring of the parent's complaint.

5) Further, USD #413 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) as described below.

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, M.Ed., 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 FEBRUARY 23, 2023

DATE OF REPORT MARCH 27, 2023

This report is in response to a complaint filed with our office on behalf of the student by the parents. The student lives with the Halls in their home through a private placement. In the remainder of the report, the student will be referred to as "the student." The mother will be referred to as "complainant A" and The father will be referred to as "complainant B." Together, The parents will be referred to as "the complainants". Chrissy Broadbent is the student's biological mother and in the remainder of this report will be referred to as, "the mother."

The complaint is against USD #437, Auburn-Washburn Public Schools. The student is enrolled at Washburn Rural High School and received special education services there. In the remainder of the report, "Washburn Rural High School" and the "district," shall refer to USD #437.

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 23, 2023 and the 30-day timeline ends on March 27, 2023. The initial complaint contained seven concerns however, it was determined that not all the concerns were addressed by IDEA regulations. Therefore, it was determined that:

Concern 1 alleged discrimination, and/or retaliation and was not investigated. The investigator provided contact information for the Office of Civil Rights to the family.

Concerns 2, 3 and the part of Concern 6 alleged current transportation violations and were investigated as Issue 1 in this report.

Concern 4 alleged sharing personally identifying information and was investigated as Issue 2. The part of Concern 4 alleging retaliation is not covered by IDEA and contact information for the Office of Civil Rights was provided to the family.

Concern 5 was a general education concern rather than a special education concern and not investigated.

The part of Concern 6 concerning transportation for the 18-21 program for the next school year while in the IEP was not investigated as these services have not yet been implemented.

Concern 7 was not investigated as the concern was general and addressed multiple students with the desired resolution beyond the scope of the child complaint investigation process.

Investigation of Complaint

Donna Wickham, Complaint Investigator conducted all interviews by telephone. She interviewed the mother on March 9, 2023, complainant B on March 13, 2023, complainant A on March 14, 2023, and the student's Social Worker, Ms. Bethany Kuhl, Calm Foster Care on March 16, 2023. Dr. Wickham interviewed Dr. Kevin Raley, Director of Special Services Auburn-Washburn Public Schools and Mr. Ed Raines, Principal, Washburn Rural High School together on March 10, 2023.

The Complaint Investigator also received emails from the complainants, parent and USD #437 staff between February 27, 2023 and March 17, 2023.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainants and district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program dated January 7, 2022
- Student Schedule for all terms for the 2022-2023 school year
- Email from Mrs. The mother, complainant A to Mr. Tyler Ayers, assistant principal dated August 8, 2022 at 8:38 a.m.
- Email from Mr. Ayers to Mrs. Hall, dated August 9, 2022 at 11:13 a.m.
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated August 24, 2022

- IEP Amendment between Annual IEP Meetings, dated August 24, 2022
- Auburn Washburn USD 437 Incoming Board of Education Orientation and Training, September 2022
- Notice of Meeting dated November 15, 2022
- Notice of Meeting dated December 1, 2022
- Documented Response Artifacts (Appendices) provided by Mr. The father and Mrs. The mother, the complainants dated December 7, 2023
- Individualized Education Program dated January 5, 2023
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated January 5, 2023
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated January 7, 2023
- Documented Response to Second Written Complaint (sic) dated January 12, 2023 from Mr. Ed Raines, Principal to Mr. and Mrs. Hall dated January 27, 2023
- Addendum to Complaint to Dr. Scott McWilliams, superintendent by the complainants dated January 12, 2023
- Email from Mr. Raines to Mr. and Mrs. Hall dated January 12, 2023 at 6:57 p.m.
- Email from Mr. Raines to Mr. Hall dated January 12, 2023 at 7:57 p.m.
- Email from Mr. Hall to Mr. Raines dated January 13, 2023 at 8:13 a.m.
- Email from Mr. Raines to Mr. Hall dated January 13, 2023 at 2:52 p.m.
- Email from Mr. Ayers to Mrs. Hall dated January 26, 2023 at 4:57 p.m.
- Email from Mr. Ayers to Mrs. Hall and Ms. Chrissy Broadbent parent dated February 1, 2023 at 4:38 p.m.
- Email from Mr. Ayers to Mrs. Hall and Ms. Broadbent dated February 1, 2023 at 7:36 p.m.
- Email from Ms. Broadbent to Mr. Ayers dated February 1, 2023 at 8:36 p.m.
- In School Suspension for the student dated February 2, 2023
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated February 2, 2023
- Screenshot of bus schedule for general education high school student dated February 2, 2023 at 10:52 p.m.
- Notarized Durable Power of Attorney for Educational Decisions between student and Mrs. Hall dated February 6, 2023
- Agenda from the February 6, 2023 USD 437 Board of Education Meeting
- Screenshot of text exchange between Mrs. Hall and student's afternoon bus driver dated February 12, 2023 at 4:49 p.m.
- Email from Mrs. Hall to KSDE dated February 12, 2023 at 11:32 p.m.

- Document from Mrs. Hall to Mr. Raines dated February 22, 2023 in response to Formal Complaint received on February 7, 2023
- USD #437 Student Activity Report for dates August 12, 2022 through March 7, 2023, printed at 12:21 p.m.
- Washburn Rural High School, USD 437 Schedule, Printed March 7, 2023 at 3:29 p.m.
- USD 437 Response to Child Complaint 23FC437-004 received March 9, 2023
- Email from Dr. Kevin Raley, special education director to Dr. Donna Wickham, complaint investigator dated March 10, 2023 at 3:27 p.m.

Background Information

This investigation involved an 18-year-old student who has lived with a family in a private placement for approximately two years through the IDD waiver. He has a case manager who oversees this placement. The student receives special education and related services under the eligibility category of autism with a secondary eligibility category of emotional disturbance. His mother reported he has been medically diagnosed with ADHD, Anxiety, ODD and Bipolar 1.

He just turned 18 and is his own guardian, but his mother reports she is his educational power of attorney and shares it with complainant A who became his educational power of attorney on February 6, 2023. The educational power of attorney for complainant A was provided to the complaint investigator.

The student will meet his graduation requirements at the end of the 2022-2023 school year and begin the transition services through special education. He has a transition plan with goals and anticipates attending technical school and learning independent living and job skills.

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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 shortening his school day.

Positions of the Parties

The complainant alleged that the student had been pulled out of his last class of the day at the high school to catch his special education bus after his class schedule changed from ending his school day at the technical school. The parents alleged that this has been an ongoing practice in the district, and he often arrived home on the special

education bus before the official school day ended. The student's mythology class ended at 3:02 p.m. daily however the special education bus was scheduled for pickup at 2:42 p.m. To make matters worse, the student had to pack his laptop and walk the entire length of the building to catch the bus early. Complainant A alleged that this resulted in missing 26 minutes of his mythology class each day. Complainant A stated that this practice continued until she told the student not to leave the class early resulting in the bus driver leaving without the student. The family then had to contact the bus company and was called back to pick him up. Finally, Complainant A requested an explanation to explain why he had to leave class early to ride his bus. As a result of all this, the district finally investigated and only then changed their practice.

The complainant and parent also alleged that the student's class schedule was changed for the convenience of district busing without considering the student's learning style and consent from the student, parent, or complainants. Only when they complained were the planned changes not made.

The district acknowledged that the student missed eighty-eight (88) minutes of IEP service minutes during the 2022-2023 school year. In response to this allegation the district reviewed the Student Activity Report/Bus Logs for this student and identified several dates when this student boarded the bus prior to the bell.

The Bus Logs and Activity Reports show the exact time the student's ID was scanned prior to boarding the bus at the beginning and end of each day. In reviewing the scan times for the student boarding the bus, there were 15 days (totaling 88 minutes) in which the student scanned boarding the bus before the 3:02 p.m. bell schedule at the end of the school day.

The district has now instructed teachers not to dismiss the student early when they see the bus arrive. Further, they have instructed the bus drivers that the students must be allowed to remain in class until 3:02 p.m. when the class ends. Arrival times in the morning were not an issue and in fact, the student's bus often arrived at least 15-20 minutes before the first bell rang at 7:55 a.m.

The district reported that this student's bus schedule is unique and did not suspect that other students with special education needs were missing service minutes due to busing. However, they reviewed Student Activity Report/Bus Logs for other students in the district and attending the high school and did not find this error did not extend beyond this student.

The district acknowledged that they asked the student to drop a Positive Behavior Support class he wanted to take because he was doing well to take a class he would benefit from. Knowing his hesitancy, the district asked him to attend the Financial Literacy class to see if he wanted to take it. He was put on the roster to hold a place in the class in the event he wanted to enroll. Since no change in schedule occurred no IEP action was needed.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and staff in USD #437.

The parents and district agree that the student missed instructional and special education service minutes due to the school bus arriving early and the student leaving class early to board the bus.

The district reported they reviewed the student activity for boarding and disembarking the bus for the 2022-2023 school year using the student's logged activity and prepared the table below to show the student's missed minutes.

Date	Scan Time	Minutes of missed services (rounded up)	Notes
8/15/2022	2:58:16 p.m.	4	
8/16/2022	2:46:55 P.M.	15	
1/3/2023	2:51:30 P.M.	11	
1/4/2023	2:28:37 P.M.	10	Wednesday Schedule
1/5/2023	2:52:34 p.m.	10	
1/6/2023	2:53:08 p.m.	9	
1/9/2023	2:52:41 p.m.	10	
1/12/2023	2:59:15 p.m.	3	
1/20/2023	2:58:56 p.m.	4	
1/27/2023	3:00:31 p.m.	2	
2/3/2023	2:59:53 p.m.	3	
2/10/2023	3:01:02 p.m.	1	
2/15/2023	2:36:35 p.m.	2	Wednesday schedule
2/24/2023	3:00:31 p.m.	2	
3/3/2023	3:01:32 p.m.	2	
Total # of missed service minutes		88	

Semester 1 (August 1, 2022 – January 2, 2023) of 2022-2023 class schedule shows that the student attending the technical school Monday through Friday at the end of the school day and enrolled in Positive Behavior Supports for 3rd period. On Wednesday, his class ended at 2:38 p.m. and the remainder of the days of the week his class ended at 3:02 p.m.

Semester 2 (January 3, 2023 – May 30, 2023) of 2022-2023 class schedule shows that the student enrolled in a mythology class at the high school Monday through Friday at the end of the school day and enrolled in Positive Behavior Supports for 6th period. On Wednesday, his class ended at 2:38 p.m. and the remainder of the days of the week his class ended at 3:02 p.m. Early Release days end at 2:17 p.m.

The January 7, 2022 IEP lists 96 minutes of daily direct special education service within the general education setting and 96 minutes of daily direct special education service within the special education setting.

The August 24, 2022 IEP Amendment signed by the parent on August 24, 2022 consenting to the change without a meeting stated, "Current IEP indicates providing Special Education Service within general education setting for 96 minutes (English and Social Studies) and 96 minutes of special education services with the special education setting (PBS). Proposed changes are a decrease of minutes to 48 for SS and PSB respectively." The August 24, 2022 PWN explanation of why the action is proposed stated, "The student is enrolled in courses at the technical school. He will not be in attendance at the high school during the afternoon classes."

The January 5, 2023 Prior Written Notice lists 48 minutes of inclusion support for the student's mythology class, his last class of the school day. It also states, "The related service of special transportation includes an estimated travel time for arrival (home to school) and departure (school to home) that is subject to route changes and is based on the school calendar."

Both Individual Education Programs in effect during the 2022-2023 school year (January 7, 2022 and January 5, 2023) show that the student receives special transportation to and from home to allow for a smaller number of student riders to provide safer transportation.

Interviews report the district is willing to offer compensatory minutes to make up for the missed 88 minutes of service for the 2022-2023 school year and Complainant A agreed to consider the compensatory minutes on behalf of the student.

Interview and documentation show the student was not enrolled in the Financial Literacy class.

Interviews revealed that the practices of students leaving early were likely unique to the student because his services are unique to his schedule this school year. The district reported that students have a bar or QR code on their student IDs that they scan upon entering and getting off the bus and it is logged as student activity. The district stated that upon receiving this allegation they examined a random group of student's scanning entry and departures from the bus and compared it to their school schedules and did not find aberrations.

Applicable Regulations and Conclusions

The complaint alleged missing special education service minutes due to the scheduling of the related service of transportation. 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. 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 district acknowledged that the student left his mythology class at the high school early on fifteen instances between August 15, 2022 and March 3, 2023 for a total of 88 minutes to board his special education bus to go home at the end of the day.

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district failed to implement the student's IEP, specifically by shortening his school day.

It is noted that the complainant alleged that the student missed service minutes due to transportation scheduling during the past three years of the student's attendance at the high school. However, the complaint investigator is only authorized to investigate this allegation for the past twelve months. Further, the complainant alleged that the practice of picking up students early and missing special education minutes occurred for more than one student. In an interview with the district it was disclosed that the district had investigated this in the same manner as used to discover the missed minutes for this student and did not discover this practice to be widespread.

Both the complainants, parent and district acknowledge that the district wanted the student to consider the Financial Literacy class instead of the Positive Behavior Support class. Although the student was put on the Financial Literacy roster it was the district practice to reserve the spot for him if he decided to enroll. The district did not follow through with the change at the request of the student and therefore did not change his IEP without a meeting. Therefore, is it *not* substantiated that the district changed the student's IEP without an IEP meeting.

It is noted that the district may make scheduling changes as they would with any district student as long as they do not change the IEP services or goals. It is further recommended that any scheduling changes for the student be weighed against the impact and timing of his medication.

> ISSUE TWO: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), released the student's personally identifiable information without written parent consent during the 2022-23 school year.

Positions of the Parties

The complainants alleged that USD #437 released personally identifiable information (PII) for the student when it shared the student's Individual Education Program with the elected members of the school board as a part of the investigation of their January 12, 2023 formal complaints of harassment, discrimination, and retaliation.

It is noted that the complainants have filed a separate child complaint allegation with the Kansas State Department of Education regarding the release of PII of another child living in their home and some aspects of that allegation overlap with this allegation. This investigation will only be concerned with the student who is the focus of this complaint.

USD #437 acknowledged that Dr. Scott McWilliams, Superintendent of USD #437, shared the student's PII contained in the student's IEP with the members of the Board of Education during executive session on February 6, 2023 as artifacts pertaining to the investigation of the January 12, 2023 complaint. However, this disclosure was in accordance with USD #437 Board Policy KN and JRB.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The findings of Issue One are incorporated herein by reference.

Interviews and documentation found that Dr. McWilliams shared the Documented Response to the 2nd Formal Written Complaint dated January 12, 2023 along with Cover Page, IEP Team Participant Page, Transition Assessment, Transition Plan and Course of Study from the January 5, 2023 IEP with members of the school board during executive session on February 6, 2023.

USD #437 School Board Policy KN requires that the superintendent discuss personnel issues with school board members in executive session. On January 12, 2023 the complainants verbally made a complaint on behalf of the student for alleged harassment, discrimination, and retaliation by Washburn Rural High School staff member Tyler Ayer, who is a member of the student's IEP team. As the complainants had made a previous complaint on behalf of another child in the family this complaint on behalf of the student was investigated within the same timeframe.

USD #437 School Board Policy JRB allows the district to release PII without the consent of the parent or student to "school officials" with a "legitimate educational interest".

The policy defines "school officials" as persons:

employed by the school as an administrator, supervisor, instructor, or support-staff member (including health or medical staff and law enforcement unit personnel); the board of education (in executive session); a person or company with whom the school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee such as a disciplinary or grievance committee; or assisting another school official in performing his or her tasks.

The policy further states that a school official has a "legitimate educational interest" when the official needs to review an education record in order to fulfill his or her professional responsibility.

Interview and document review show that the superintendent provided orientation training to new board members (revised on September 2022) related to permissible subjects and issues of confidentiality during executive session between October 4,2022 and November 23, 2022.

The February 6, 2023 Board Meeting agenda for the executive session lists "8.01 Discuss Personnel Matters Pursuant to the Exception for Non-Elected Personnel under KOMA."

Applicable Regulations and Conclusions

The Family Educational Rights and Privacy Act (FERPA) affirms the right of confidentiality of education records for all students in public schools and their parents. In addition, Federal Regulations at 34 C.F.R. 300.612 through 300.624 and at K.A.R. 91-40-50 specifically outline parental access to educational records and confidentiality of those records.

Federal regulations implementing IDEA at 34 C.F.R. 300.622 require that parent consent must be obtained before personally identifiable information is disclosed to any other parties, other than officials of the public agency. As Superintendent of the district, Dr. McWilliams is clearly an official of USD 437.

In this case, the complainants filed a formal complaint against one Washburn Rural High School staff member alleging harassment, discrimination, and retaliation on January 12, 2023. The findings of the investigation were shared during the executive session of the February 6, 2023 School Board Meeting by Dr. McWilliams, Superintendent of USD #437.

USD #437 School Board Policy KN requires the superintendent to share personnel matters with members of the Board of Education in executive session as the school board is tasked with oversight of school and district personnel. It is concluded that this is a “legitimate educational interest” under School Board Policy JRB. It is noted that USD #437 School Board Policy JRB specifically includes the board of education operating in executive session under the definition of “school officials”.

Based on the foregoing, a violation of special education statutes and regulations is *not* substantiated for failing to obtain written parent consent prior to releasing the student’s personally identifiable information to school board members during the February 6, 2023 USD #437 School Board’s executive session.

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:

> Federal law at 34 C.F.R. 300.17(d) and 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 as written.
>
> In this case, the evidence supports the finding that USD #437 did not provide 88 special education services minutes to the student during the 2022-2023 school year due to shortening the school day to provide special education transportation.

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 comply with federal regulations at 34 C.F.R. 300.17(d) and K.A.R. 91-40-19(a) which requires 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 as written
2. Further, by April 15, 2023 USD #437 will offer the student compensatory education for a minimum of 88 minutes for the amount of time missed due to early departure to ride the special education transportation (note the district is offering 90 minutes). The district proposed offering the student 90 minutes (two 45-minute sessions) of compensatory after-school tutoring in mythology. The parent may accept all, or any portion, or none, of the offered compensatory services. The district will provide a Prior Written Notice of a schedule of how and when the minutes are provided, or that the services will not be provided because the parent has declined the offered services, to the parent and to Special Education and Title Services (SETS) by May 30, 2023.
3. The district will continue to monitor the Student Activity Report on a monthly basis through May 30, 2023 to ensure that any future instances of the student boarding the bus prior 3:02 p.m. are not detected. The results of the monitoring will be submitted to Special Education and Title Services (SETS) by June 5, 2023.
4. The district will review the direction/training provided to district staff and bus drivers regarding students receiving special education services early departure for

bussing to ensure that special education transportation is not affecting the delivery of services for any other students and submit those findings to Special Education and Title Services (SETS) by June 5, 2023.

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, Ph.D.
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)

23FC33 Appeal Review

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No.
Auburn/Washburn Public Schools: 23FC437-004

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on February 23, 2023, by the complaintants, on behalf of the student. The student has been privately placed in the home of the complaintants. The mother is the student biological mother. In the remainder of the decision, the complaintants will be referred to collectively as “the complainants”, Johnathan will be referred to as “the student”, and the mother will be referred to as “the mother”. An investigation of the complaint was undertaken by complaint investigators on behalf of the Special Education and Title Services Team at the Kansas State Department of Education.

Following that investigation, a Complaint Report, addressing the parent’s allegations, was issued on March 27, 2023. That Complaint Report concluded that there was a violation of special education laws and regulations.

Thereafter, the complainants 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 complainant, the complaint report, the complainant’s appeal and supporting documents 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.

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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

COMPLAINANT'S APPEAL

The following issues in this complaint have been addressed by the Appeal Committee:

> 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 shortening [the student's] school day.

In response to this issue, the complainants dispute the following:

1. The complainants disagree, that, "The Bus Logs and Activity Reports show the exact time the student's ID was scanned prior to boarding the bus at the beginning and end of each da", claiming that this statement is "completely FALSE".

The complainants argue that this statement is implausible because the student does "NOT carry [the student's] ID each day and states, "we are with [the student] every morning when [the student and another youth] ride the bus and there is no scanning of student IDs that take place". The Complainants seem to base their argument on their observations and understanding that the student does not carry a student ID, concluding from that, that this information "can be entered at any time by [the district] staff and are not real boarding times." The district offers another explanation stating, "when students do not have their student ID, then bus drivers manually load students by tapping the "load" button under the student profile when they enter / exit the school bus." Despite the conclusions drawn by the complainants the committee finds no evidence in the record to support the complainant's accusation that the district is inputting information at any time other than when the student is entering / exiting the bus. In this case, the investigator found, and the record shows, that the district provided the investigator with a screenshot of the student's bus schedule that uniquely details the student's boarding times and include the hour, minute, and second in that the student boarded the bus (leaving the school heading home). The district acknowledged, and the record confirms, that on 15 days the student did leave class early and did miss service minutes due to busing, based on the student's recorded boarding data. Therefore, the committee affirms the investigator's finding that the student's ID was scanned and does not find a violation of state or federal laws with regard to this issue.

2. The complainants disagree with the investigator's finding that 88 service minutes were missed for two reasons, stating "this is not an accurate account of the total instructional minutes missed in school for the 2022-2023 school year."

The complainants argue that the total number of missed minutes found by the investigator is wrong because a) "[the student] has to leave [the student's] class earlier than [the student's] [boarding time] to make the bus", and because b) the report that was submitted by the district, "is not 12 months' worth of bussing data on [the student]".

a. Whether the student's boarding time accurately reflects the student's missed service minutes.

In the original complaint, the complainants argue that the student would have missed more than the investigator's finding of 88 minutes because the student would have left class approximately 10 minutes prior to any time recorded on the district's bus report. For example, the district reports that 3 minutes were missed on 1/12/23 based on the difference between the student's "scanned" time boarding the bus (2:59:15 p.m.) and the official end of the student's class (3:02 p.m.). The complainants argue that it is more likely that 13 minutes would have been missed, not 3 minutes. The committee agrees that the complainants' explanation illustrates a plausible calculation, however, there is no evidence in the record to prove this assumption or the estimate of 10 extra missed minutes each time the student boarded the bus early. Further, the complainants offer no evidence to support their conclusions. The investigator found, and the record supports, that the total number of minutes missed, for the 2022-2023 school year, was based on precise data provided in the bus report, rounding up in the student's favor.

Therefore, the committee ***does not*** find an error with the investigator's finding of 88 missed service minutes for the 2022-2023 school year, based on the bus report.

b. Whether the investigator erred in failing to investigate whether services minutes were missed, due to bussing, back a full twelve months.

In the original complaint, the complainants allege that the student missed service minutes for the past three academic years. However, the investigator found, and the committee agrees, that the investigator is "only authorized to investigate this allegation for the past twelve months." In discussions between the committee and the investigator, the committee found that the investigation was contained to the 2022- 2023 school year, specifically August 2022 – February 2023, a total of seven months.

The investigator, based on interviews with the district and the complainants, requested documentation on the bussing issue as it pertained to the 2022-2023 school year.

There is no evidence in the record that indicates that either party objected to the scope of the investigation, or evidence in the record to show that either party voluntarily provided the investigator with information outside the 2022-2023 school year.

However, the committee does find that the investigator should have investigated back a full 12 months. Although the committee notes that the investigator did specifically ask each party for information only pertaining to the 2022-2023 school year, and in verbal communication with the complainants, the complainants specifically focused on the 2022-2023 school year, federal and state law permits an investigator to investigate back a full twelve months. Furthermore, the committee does not find anything within the original complaint restricting the investigation to the 2022-2023 school year and the investigator acknowledges in her report that she is "authorized to investigate this allegation for the past twelve months". Due to this, the committee finds that the investigator did err in limiting her investigation to the 2022-2023 school year and requires the district to determine whether the student missed any additional special education service minutes dating from August 2022, back to February 23, 2022. The district is directed to review the Student Activity Report/Bus Logs for this student from August 1, 2022 back to February 23, 2022 to determine the number of minutes (if any) the student boarded the bus before the bell indicating the end of the school day.

3. The complainants seem to disagree with the investigator's finding that "the district may make scheduling changes as they would with any district student as long as they do not change the IEP services or goals" for two reasons.

Complainants argue that the district made changes, but were not permitted to make changes, to the student's schedule for two reasons. First, the complainants argue that "the school will not transport [the student]"..."in the afternoon for the 18-21 transition program as part of [the student's] IEP". Next, the complainants argue, in reference to a January 5th IEP meeting pertaining to the transportation request, that they "have yet to receive that PWN", a requirement when a service is denied. However, evidence in the record does not substantiate a violation of the student's IEP nor does the record show that the complainants had a legal right to receive a PWN.

a. Whether the district would transport the student to the technical high school from the high school for the 2023-2024 school year.

The record shows that an IEP meeting, held on January 5th, 2023, did discuss possible transportation in the afternoon for "the 18-21 transition program" for the 2023-2024 school year. Complainants argue that, at the meeting, the district, "said they would not provide transportation to and from for the program". The complainants note they want this transportation so that the student can be enrolled "next year [in a course] that was only offered in the morning at [the high school] AND attend [the technical school] in the afternoon". The investigator found, and the record confirms, that "both Individual Education Programs in effect during the 2022-2023 school year (January 7, 2022 and January 5, 2023) show that the student receives special education transportation to and from home". The investigator also found, and the record supports, that the district did not change the student's IEP or goals, without an IEP meeting or consent from the educational decision maker. The committee notes that "each IEP of an exceptional child and any amendment or modification of an IEP shall be made by the child's IEP team". (K.S.A. 72-3429(b)(1)). There is nothing in the record to show that this did not occur. To the contrary, the record shows, that an IEP team meeting was held on January 5th, the team did discuss the transportation needs of the student, and that a PWN was issued to the parent of the student. While complainants may not agree with the decision of the IEP team, that, by itself, is not a violation of state or federal law.

Therefore, the committee ***does not*** find the investigator erred in her finding and there is not a violation of state and federal laws.

b. Whether the district failed to provide the complainants with a PWN following the January 5th IEP team meeting.

As stated above, the committee finds, and the record supports, that the district did provide a PWN to The acting advocates following the January 5th IEP meeting. The complainants argue that they "have yet to receive that PWN". However, the record shows that the district properly refused to provide the complainants with the January 5th PWN following the IEP meeting. An email, dated February 1, 2023, exchanged between the district and the complainants explained that the district is "unable to provide [the complainants] with a Prior Written Notice for [the complainants] request as requests of this nature need to come directly from an educational decision maker (in this instance, [the student's] biological parents)". The investigator states, and the record confirms, that the complainant did not become the student's educational decision maker until February 6, 2023, by way of an Educational Power of Attorney signed by the student (who is now 18). There is no indication, in the record, that the biological parents of the student did not receive a PWN following the IEP meeting. Further, the district has no obligation to provide the complainants with a PWN prior to the complainant becoming an educational

decision maker. Therefore, the committee finds that the investigator did not err in her finding and that there is not a violation of state or federal laws.

4. The complainants disagree with the investigators finding that "the district had investigated this in the same manner as used to discover the missed minutes for this student and did not discover this practice to be widespread."

In their appeal, the complainants argue that "there are other students in the SPED busing who ride the same bus with [the student] and the student in #22FC437-001 (complaint filed by the complainant on behalf of another student) that are released early as well". In conversations with the investigator, the committee found that during interviews, documented in the record, the investigator found that bussing, for the student in this complaint, and the 22FC437-001 student, are unique, per parent and complainant request. (The committee will not address the findings in complaint 22FC437-001 as it is outside the scope of this appeal.)

The investigator found, and the record shows that "interviews revealed that the practices of the students leaving early were likely unique to the student because [the student's] services are unique to [the student's] schedule this year." In further conversation with the investigator, the committee found that, per complainant and parent request, the district had altered the student's class and bus schedule, in conformity with the student's IEP, and with consent from parents, so that bussing became unique to this student, meaning the student was accessing bussing that other SPED students were not. Additionally, the committee finds, and the record supports, that the district conducted a random sample investigation into other SPED student's schedules to determine if transportation was affecting other student's services. The random sampling shows that transportation was not affecting other students. Finally, the only documentation the complainants provide as evidence that the practice is widespread are emails between the complainants and the district regarding the student in formal complaint no. 22FC437-001, another student under complainant's care, who also had a unique schedule. According to interviews, conducted by the investigator, the student in complaint 22FC437-001 had a similar unique bussing schedule as the student in this appeal, per complainant's request. Therefore, based on interviews and other documentation in the record, the investigator found, and the committee agrees, that transportation was not affecting other students in the district. The committee finds that the investigator did not err in her finding and affirms the conclusion that there is not a violation of state or federal laws.

5. 5. The complainants disagree with the investigators finding that "both the complaints, parent and district acknowledge that the district wanted the student to consider the Financial Literacy class instead of the Positive Support class."

In response to this finding, the complainant states, "We did not acknowledge a consideration of the Financial Literacy class. We said [the student's] schedule was changed and [the student] was put in that class". The complainants further state that "the student's IEP services, and schedule were changed, and the PBS (Positive Behavior Support) class was dropped by the school, prior to having any input from the IEP team and/or without a PWN of their intent to take PBS services out of [the student's] IEP". In this case the committee finds that the complainants confuse the making of a change to a student's IEP, without consent or a PWN, with the mere suggestion that a change may be in the student's best interest. While the committee agrees that if a student's IEP and goals are changed, that an IEP meeting should be held and consent from the parent secured, however an IEP meeting is not required when only the possibility of these events arise. Following the complainant's reasoning, a district would never be able to communicate with a parent about a student's schedule outside a formal IEP meeting. This is too restrictive and not in accordance with the spirit of the law.

In this case, the investigator found, and the committee agrees, that "interview(s) and documentation show the student was not enrolled in the Financial Literacy class". The record confirms that on January 2, 2023, the district communicated thoughts about the student's second semester schedule, namely the possibility of adding a Financial Literacy class, as the district thought it may be beneficial to the student. The district further suggested that the student may not need the PBS class but instead could report to the counselor directly about how the student was doing following the student's day at the technical center. The record shows that the email sent on January 2, 2023, requested "any thoughts" on this idea. There is nothing in the record that indicates the district took steps to unilaterally, and permanently change the student's IEP or goals, that the district would not have properly held a meeting or gained consent prior to any change, or that the district forced the student to enroll in the class against the student's wishes. The committee finds that the district was simply offering a suggestion for the student and sought student, parent, and complainant input. The committee notes that a mere suggestion about an alteration to a student's schedule, even a suggested "trial" for a student, without making a unilateral decision, is not the same as changing a student's IEP services or goals without consent or without a meeting.

The committee acknowledges, and the record shows, that the complainants had concerns about the district's suggestion, and that they communicated those concerns to the district on January 3, 2023. The complainants stated to the district, "I know [the student] didn't want this

and that his mother and myself didn't necessarily agree with this change either", in reference to a change on the "parent portal" adding the Financial Literacy class. First, the committee finds that while the complainants were included as part of the student's IEP team, at that point, they were not the legal decision makers for the student. As such, the district may consider their concern, but was not obligated to act upon them. As noted earlier, the complainant did not become educational decision maker until February 6, 2023. Further, nothing in the record supports (outside the complainant saying so) that the mother (parent and the lawful decision maker) contacted the district refusing to consider the plan presented by the district or that the student refused the pro-offered "trial" of the Financial Literacy class (again, outside the complainant saying so). In contrast, the record reveals, that due to the district "knowing [the student's] hesitancy, the district asked [the student] to attend the Financial Literacy class to see if [the student] wanted to take it", creating a "trial" for the student. The record further shows the district responded to the complainant's inquiry as to why the class was added to the student's schedule In the "parent portal", stating that the district, "wanted [the student] to check out [the class] first to see what it was like" and indicating that the district had conversations with the student, asking the student to "see if [the student] thought [the class] would be a good fit for [the student] and if [the student] didn't really want it, [the student] didn't have to be there." prior to any actual change taking place. The addition, of the Financial Literacy class, on January 3, 2023, in the "parent portal" does not, in itself, support a finding that the district unilaterally changed the student's IEP or goals. The committee finds that the schedule simply confirms the investigators finding, and the record, which shows a placeholder class was added during the timeframe the district was conducting the "trial". Further, and most importantly, the investigator found, and the committee agrees, that the change on the district's schedule system did not affect the student's IEP or goals.

The committee notes that a violation of law only occurs when a violating action, in fact, occurs. The mere suggestion that a change to a student's IEP may be beneficial to a student, without further evidence that the change was made without consent, or a meeting, does not equal a violation of law. Therefore, the committee finds that the investigator did not err in finding that the student was not enrolled in the Financial Literacy class, that the student's IEP and goals were not changed without a meeting or consent, or that a PWN was improperly withheld from complainants and do not find a violation of state or federal laws.

ISSUE TWO: The USD #437, in violation of state and federal regulations implementing the individuals with Disabilities Act (IDEA), released the student's personally identifiable information without written parent consent during the 2022-23 school year.

In response to the investigator's finding that the district did not violate state or federal laws by sharing student data with the school board, the complainants dispute the following:

1. The complainants seem to disagree with the investigators finding that documents were shared, regarding the student, in "response to the 2nd Formal Written Complaint dated January 12, 2023".

In response the complainants argue that the district's School Board Policy KN, which requires "the superintendent to share personnel matters with members of the Board of Education in executive session as the school board is tasked with oversight of the school and district personnel", does not apply to this student "because there was no Formal Written Complaint dated January 12, 2023, filed with [the district] on behalf of [the student]".

The complainants seem to take issue with the investigators label of "2nd Formal Written Complaint dated January 12, 2023". While the record does show the original complaint was filed by complainants on January 2, 2023, the record also shows that the complainants amended it on January 12, 2023. The committee finds the complainant's argument that "there was no Formal Written Complaint dated January 12, 2023, filed with [the district] on behalf of [the student]" is too fine a distinction which does not change the investigator's finding.

The complainants argue that "because [the student] was never a listed party as a complainant in the complaint" that the complaint "had absolutely nothing to do with [the student]". The complainants seem to argue that the school board should not have been given access to the student's records because the student was not listed as a party to the complaint. However, the investigator found, and the record shows, that the complainants directly linked the student to the complaint through written communications exchanged between the complainants and the district on January 12th and 13th. On January 12, 2023, the complainants sent an email to the district discussing the student (in this appeal), another student, and a district staff member (named in the January 12, 2023, complaint). Additionally, on January 13, 2023, the complainants sent an email to the district, stating, "the problem is not just with my two students at the high school", and "we (the children, my wife, and I) experience harassment and retaliation…". The committee finds that the student was directly involved in the complaint, by the complainants,

regardless of the whether the student was specifically named in the original January 2, 2023, complaint.

The complainants also argue that the school board did not have a "legitimate educational interest in knowing the content of [the student's] educational records". In review of the district's policy, the committee notes that the Superintendent is required "to discuss personnel issues with members of the school board in executive session" when school officials, including school board members, have a "legitimate educational interest" which permits the board member "to review an educational record in order to fulfill his or her professional responsibility". First, the committee will not use this appeal to comment on the district's policy or how the district determines a "legitimate educational interest" as a district's policy is determined by its local school board, and, unless the district fails to follow its own policies, creating a potential violation of special education state and federal law, the committee has no jurisdiction to overrule the district's determination of "legitimate educational interest". In this case, the investigator found, and the record confirms that the district did follow its own policy. Therefore, the committee affirms the investigator's finding that the district did not violate state or federal laws by sharing student data with the school board.

2. The complainant argues that the student "is not an employee of [the district] and [the student's] educational records should not have been discussed or provided to the board in executive session" and the district is not required "to share ALL student educational information.".

In this case, the complainants argue that the release of the student's "special education information and disabilities" are not required under the district's policy. Complainants argue this, in part, because the student is "not an employee", and because the district's "KN policy does not "require" the superintendent to share ALL student educational information." The complainants label this section of their appeal as "Educational Records and FERPA". First, whether the student is an employee is irrelevant to whether the district is permitted to share educational information with the school board.

Second, as stated above, the district may create its own policies and procedures. In this case, the record shows that the district's policy permits data sharing when there is a "legitimate educational interest" to "school officials", which includes school board members.

The investigator states, and the committee agrees, that, "parent consent must be obtained before personally identifiable information is disclosed to any other parties, other than officials of the public agency." (34 C.F.R. 300.622). As discussed by the investigator in her report, school board members are officials of the school (public agency). Further, while the complainants

correctly point out that the Superintendent is not required to share "ALL information", per the district policy, they fail to recognize that there is nothing in the policy which limits what records may be shared. Also, as noted above, the district and the complainant's both acknowledge multiple emails and communications which occurred between the complainant and the district that did involve the student in the complainant's formal complaint to the district. While a FERPA issue is outside the scope of this appeal, the committee does note that it finds nothing, in the record, which indicates the district did not have a "legitimate educational interest" or that it did not follow its own policy. Therefore, the committee finds that the district appropriately followed its policy, and the investigator did not err in her finding.

3. The complainants argue that the district did not follow their policy, noting that "the only time the school board gets involved and or MAY "need to know" ANYTHING about the documented response of the formal complaint and its findings from the Superintendent is if the complainant APPEALS the complaint determination results".

In reference to this argument, the complainants point to the district's policy which states, "Such investigator shall be informed of the obligation to maintain confidentiality of student records and shall report the findings of fact and recommend corrective action, if any, to the board in executive session." This argument and quote regard the district's policy on internal investigation procedures. The complainant's argument, in this case, is ineffective because the policy, that the complainants point out, states that the board, in executive session, "shall report the findings" to the school board.

Essentially the complainants argue that the district followed its own policy. Regardless, this is not an issue presented in the original complaint, and as such, the committee will not address it now.

ISSUE 3: Corrective Action

The committee notes that Kansas regulation K.A.R. 91-40-51(f) permits the parties to a complaint to file an appeal of the findings and conclusions in a complaint report. This regulation does not authorize an appeal of corrective actions.

In the appeal, the complainants ask "that KSDE review in its entirety Complaints 22FC437-001, 23FC437-003, 23FC437-004 and the appeal responses for each." The committee declines to do so. While the committee may occasionally adjust the corrective action of a final report on appeal, based on the findings of the committee, it will not unilaterally assess the corrective action, for all complaints filed by a single complainant, nor will it unilaterally create corrective

action. Each formal complaint may individually be appealed according to its own separate timeline. There is not a process to appeal beyond that.

Additionally, the complainant attempts to seek corrective action on a "possible 4th complaint" about another student. Complainants argue that "We have a 4th student in our home now, who we believe we could also file a complaint with KSDE for Child Find, IDEA, FAPE violation" and press the committee to "note" emails about this "4th student". However, addressing possible violations that are not even yet filed in a formal complaint is well beyond the scope and jurisdiction of this appeal committee and will not be addressed. Therefore, the committee *declines* to make any finding on the issue of corrective action.

ISSUE 4: Corrective Action Additions

The complainants argue that "an outside Special Education and Child Find task force needs to come in and AUDIT the policies, programs, and practices of [the district]." Again, as stated above, the committee does not implement its own corrective action. Assigning corrective action is the responsibility, and at the discretion of, the investigator assigned to the formal complaint. Additionally, appointing a "task force" is outside the scope of this appeal and the committee. Therefore, the committee declines to make any findings on the issue of corrective action additions.

CONCLUSION

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 shortening [the student's] school day.

1. The Appeal Committee concludes that the investigator did not err in finding that the student's ID was scanned and does not find a violation of state or federal laws. No corrective action is required.
2. The Appeal Committee concludes that,
    a. The investigator did not err in substantiating a violation of federal and state law, finding that the student missed 88 service minutes from August 2022 – February 2023. The committee finds that the investigator appropriately applied corrective action, regarding the 2022-2023 school year, requiring the district to make up the missed 88 minutes.

b. The investigator did err in failing to investigate a full twelve months back from the date the complaint was filed.

3. The Appeal Committee concludes that the investigator did not err in finding that "the district may make scheduling changes as they would with any district student as long as they do not change the IEP services or goals". Further, The Appeal Committee concludes that the investigator did not err in finding that the district conducted an IEP meeting, addressing transportation, and provided a PWN to the proper recipients. No corrective action is required.
4. The Appeal Committee concludes that the investigator did not err in finding that the district had investigated the bus schedule/possible missed services of other SPED students in the same manner as used to discover the missed minutes for this student and did not find this practice to be widespread. The committee does not find a violation of state and federal law. No corrective action is required.
5. The Appeal Committee concludes that the investigator did not err in finding that the complaints, parent and district acknowledged that the district wanted the student to consider the Financial Literacy class instead of the Positive Support class, or that the student was not enrolled in the Financial Literacy class, that the student's IEP and goals were not changed without a meeting or consent, or that a PWN was improperly withheld from complainants. The committee does not find a violation of state or federal laws. No corrective action is required.

ISSUE TWO: The USD #437, in violation of state and federal regulations implementing the individuals with Disabilities Act (IDEA), released the student's personally identifiable information without written parent consent during the 2022-23 school year.

1. The Appeal Committee concludes that the investigator did not err in finding that there was not a violation of state or federal law when the district shared student data with the school board. The committee finds no violation of state and federal law. No corrective action of required.
2. The Appeal Committee concludes that the investigator did not err in finding that personally identifiable information may be disclosed to the school board when the board has a legitimate educational interest.
3. The Appeal Committee concludes that the complainant's argument that the district did not follow their own policy regarding reporting complaint findings was not in the original complaint and will not be addressed. No corrective action required.

ISSUE 3: Corrective Action

1. The Appeal Committee concludes that the "Corrective Action" argued by the complainants is beyond the scope and jurisdiction of this appeal committee and will not be addressed. No corrective action is required.

ISSUE 4: Corrective Action Additions

1. The Appeal Committee concludes that the "Corrective Action Additions" argued by the complainants is beyond the scope and jurisdiction of this appeal committee and will not be addressed. No corrective action is required.

Required Action:

The Appeal Committee concludes that the investigator did err in failing to investigate a full twelve months back from the date the complaint was filed.

Within 15 calendar days of the date of this Appeal, USD #437 shall:

a. Review the Student Activity Report/Bus Logs for this student from August 1, 2022, back to February 23, 2022, to determine the number of minutes (if any) the student boarded the bus before the bell indicating the end of the school day.
b. The total number of missed service minutes derived from this process (if any) shall be: (a) reported to SETS and (b) added to the compensatory education required in corrective action 2.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 21st day in April, 2023.

APPEAL COMMITTEE:

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Mark Ward: Attorney, Special Education and Title Services,

Ashley Niedzwiecki, Attorney, Special Education and Title Services.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #512
ON FEBRUARY 24, 2023

DATE OF REPORT March 31, 2023

This report is in response to a complaint filed with our office on behalf of the student by his parents, The parents. In the remainder of the report, The student will be referred to as "the student" and The parents will be referred to as "the parents", or "the complainants".

The complaint is against USD #512 (Shawnee Mission Public Schools). In the remainder of the report, "USD #512," "the "school," the "district", and the "local education agency (LEA)" shall refer to this responsible public agencies.

The Kansas State Department of Education (KSDE) allows approximately 30-days to complete the investigation of a child complaint and issue a report from the date a complaint is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 24, 2023 and the timeline was extended until March 31, 2023 because the district was on spring break for a week during the investigation and was unable to respond to additional questions and requests for documentation in a timely manner.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the parent by telephone on March 1, 2023 to clarify the issues of the complaint. The complainant was interviewed again by telephone on March 17, 2023.

Sherry Dumolien, Director of Special Education, proposed a resolution to the allegations in the complaint to the KSDE on March 6, 2023; however, this resolution was not accepted because it was determined that the proposed resolutions did not sufficiently address these allegations in the complaint. Ms. Dumolien was interviewed on the telephone on March 8, 2023 regarding the allegations. She also provided written responses to questions on March 24, 2023 and March 28, 2023.

In completing this investigation, the Complaint Investigator relied on the following documentation provided by the complainants and the district in making findings and conclusion:

- Individualized Education Program (IEP) dated January 28, 2022
- IEP Goal Progress Reports dated between March 30, 2022 and January 3, 2023
- PowerPoint slides for special education teacher in-service held on August 8, 2022
- *SPECIAL EDition* newsletters for all USD #512 special education staff dated August 2022 through January 2023
- First Semester grades for the 2022-23 school year
- Notice of Meeting (NOM) dated January 10, 2023 scheduling an IEP team meeting for January 25, 2023
- Draft version of an IEP dated January 25 , 2023 with parent notes and comments
- NOM dated January 10, 2023 scheduling an IEP team meeting for January 27, 2023
- NOM dated February 2, 2023 scheduling an IEP team meeting for February 3, 2023
- IEP dated February 3, 2023
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 3, 2023 and signed by the parent on that same date
- Proposed Resolution to 23FC512-001 dated March 6, 2023
- Email written by Mark Ward, Attorney for KSDE's Special Education and Title Services (SETS), to Sherry Dumolien, Director of Special Education at USD #512, on March 8, 2023 at 10:42 a.m.
- Email written by Jeffery Hargrove, Special Education Teacher, to the complainants on March 21, 2023 at 3:44 p.m. regarding third quarter IEP goal progress reports
- Email written by the parents to Mr. Hargrove on March 22, 2023 at 1:45 p.m.
- Email written by Emily Demo, Assistant Principal, to the parents on March 23, 2023 at 11:30 a.m.
- Accommodation Implementation and Documentation Chart created by the student's classroom teachers
- Response to the Allegation written by Ms. Dumolien dated March 24, 2023
- Email written my Russell Debey, Environmental Education Teacher, to the parents on March 24, 2023 at 4:02 p.m.
- Email written by the parents to Mr. Debey on March 25, 2023 at 11:33 a.m.
- Email written by the parents to Mr. Debey on March 26, 2023 at 12:36 p.m.
- 2022-23 School Year Calendar for USD #512
- Second Semester Grade Reports for all seven of the student's classes
- Response to Additional Questions written by Ms. Dumolien dated March 28, 2023

Background Information

This investigation involves a seventeen year old student currently enrolled at Shawnee Mission East High School in the eleventh grade in USD #512. He participates in a modified block schedule where he attends all seven of his classes for shorter periods of time on Mondays. He then attends three classes on Tuesday/Thursdays and four classes on Wednesday/Fridays for longer periods of time.

He was originally evaluated and found eligible for special education under the exceptionality of Emotional Disturbance in the seventh grade. Previously, he received support in the general education setting through an individual accommodations plan under Section 504 of the Rehabilitation Act. The student has medical and mental health diagnoses and takes medication for Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), and Depression. He is followed by both medical and mental health professionals in the community as well as receives special education services in the school setting.

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

> ISSUE ONE: The USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP during the 2022-23 school year, specifically the accommodations/modifications listed in the January 28, 2022 IEP.

Positions of the Parties

The complainants alleged USD #512 regularly failed to provide all of the classroom accommodations/modifications required by the student's IEP. They were particularly concerned in regards to the accommodations/modifications not being provided in the

U.S. History class because of a long-term substitute teacher providing special education support in that class during the end of the first semester. The parents reported that Brenda Fishman, the U.S. History Teacher, confirmed this information at the February 3, 2023 IEP team meeting.

They are also concerned about the student not having paper copies of materials and resources necessary to complete assignments that were required to be completed via computer, specifically in the Auto Essentials class, which resulted in the student failing that class at the end of the first semester. The parents are concerned that this continues to be an issue during the second semester and believe that the student is being penalized for not having computer access to the required and necessary materials to successfully complete his assignments.

The district noted that an investigation was initiated into concerns related to the job performance of the student's case manager during the 2022 – 23 school year. USD #512 stated, "The case manager's Kansas National Education Association (KNEA) legal counsel negotiated a separation agreement with the district whereby the case manager voluntarily resigned from employment".

The LEA indicated the resignation occurred at the end of January 2023 just prior to the student's annual IEP team meeting. The LEA reported that the job performance concerns which resulted in the case manager's resignation are directly related to the allegations made by the parents in this complaint. USD #512 report this was an isolated situation involving one employee and believe the change in personnel should have alleviated the problems.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #512.

There have been two IEPs in effect during the 2022-23 school year. The first IEP was developed on January 28, 2022 and the second IEP was developed on February 3, 2023.

The January 28, 2022 IEP included the following accommodations/modifications:

1. In classroom breaks during classroom instructional activities, tests or quizzes taking over 15 minutes as the student will stay in the classroom utilizing a mental break (20 seconds or less). For example (head down, pencil down, sharpening pencil) and

prompting back to class activity unless the student request an alternate location for focus with supervision.

2. Frequent checks for understanding of instructional learning objectives, assignment expectations, and his application of the information during class time. Example- check-in at the beginning of class for assignment completion, following instruction, and at the end of class during guided practice or application of the learning objective given.
3. Prompt the student to review/remind him of his classwork and homework with the general education teachers/ and or support staff before class ends. The student's work completion/assignments will be reviewed during study skills class between teacher and the student. Noted in planner left in study skills class.
4. Seating next to positive peer models both in work completion and on task behavior and away from possible distractions. Sitting furthest away from the door.
5. Provide structured time for The student to organize his materials, prioritize his tasks, specific task analysis on how to break down a task with ordered steps for completion during study skills and supported classes/and general education classes.
6. Assist the student in study skills to develop and support his executive functioning skills. In study skills, the student will need support with a check-in planner which the student implements for example, writing in his missing assignments, reviewing updated grades, time management, current assignments, and organization. The student can construct his own organizers /planner or use the schools planner format. This will be kept in his study skills class. Perhaps the visual will provide him a task analysis with time sequential order of steps and pace he must maintain to complete the specific task/ assignment at due date that is written. Study Skills teacher input to assist the student in setting attainable goals. The student will work on self-advocacy in study skills and implement in his general education classes.
7. Reduce or shorten the length of an assignment to an amount that the student will demonstrate his knowledge. -when working on academic tasks, when possible, provide material to the student in smaller chunks and ask him to complete during a certain amount of time. For example, "Complete __ # of questions in the next 20 minutes, and you can take 5 minutes to do "(preferred activity)"
8. Allow the student to self-advocate for extended time per teacher per assignment. Alternate setting testing or long assignments. Break up large assignments into sections
9. Communicate with parent once a week. Periodic behavior contracting with case manager and admin regarding attendance and expected classwork completion. Technology plan as planned and agreed upon between parent/admin.

10. Planned time with preferred staff member when assignments are completed.
11. Access to paper copies of assignments when possible to alleviate need for MacBook/computer access

fter an internal investigation of this complaint, the LEA concluded that the noncompliance was the result of the student having a long-term substitute teacher for special education support in his U.S. History class during the end of first semester. USD #512 stated in the March 6, 2023 proposed resolution letter:

> USD 512 acknowledges that the district does not have records reflecting that each of the accommodations outlined in the student's IEP dated January 28, 2022 were implemented during the 2022-23 school year. Therefore, USD 512 acknowledges that staff may have failed to implement the IEP accommodations outlined for the U.S. History class.

Based on its internal investigation, the LEA proposed to update procedures related to long-term substitute teachers as follows:

> When a long term sub is established, the district will put in place an onboarding protocol to share with the individual covering the vacancy on day 1. This protocol will be documented and will include a review of the accommodations/services the substitute is responsible for implementing. This may be done by one of the following individuals: Special Education Coordinator, School Psychologist, Department Chair, Certified Special Education Staff or Related Services providers.

USD #512 reported that a paperwork error was made on the January 28, 2022 IEP which showed that all of the accommodations/modifications were to only be provided in the special education setting rather than the general education setting. Ms. Dumolien indicated this was incorrect and that the error was corrected on the February 3, 2023 IEP. The district provided a chart completed by each of the general education teachers describing how each accommodation/modification was provided during the 2022-23 school year in the general education classrooms and included examples of the accommodations/modifications provided to the student.

However, the chart also showed that all of the accommodations/modifications were not provided on a consistent basis in all settings and that the general education teachers did not understand all of the accommodations/modifications that were to be provided to the student. For example, for the accommodations/modifications for "planned time with

preferred staff member when assignments are complete", two teachers indicated that did not understand this accommodation/modification and another teacher stated, "I was available before and after school every day for the student to come in and ask questions or discuss class work".

The IEP dated February 3, 2023 includes the following accommodations/modifications in the general education setting on a daily basis:

- During classroom instructional activities, tests, or quizzes taking over 15 minutes, the student will be allowed to take a mental break (20 seconds or less).
- Frequent checks for understanding of instructional learning objectives.
- Seating next to positive peer models away from possible distractions. Sitting furthest away from the door.
- Access to alternate setting for testing or long assignments

The following accommodations/modifications were required on a daily basis in the special education setting:

- The student's work completion/assignments will be reviewed during study skills class.
- Provide structured time for Daniel to organize his materials, prioritize his tasks, review items in his planner, goal-setting, self-advocacy strategies, specific task analysis on how to break down a task with ordered steps for completion during study skills and supported classes/and general education classes.
- Chunking of material into smaller sections.
- Behavior contracting with case manager and admin regarding attendance and expected classwork completion.
- Planned time with preferred staff member when assignments are completed.
- Access to paper copies of assignments when possible to alleviate need for MACBOOK/computer access

During the first semester of the 2022-23 school year, the student earned a grade of "A" in his Study Skills class; a grade of "C" in English/Language Arts class; grades of "D" in his Investing, U.S. History, Environmental Education, and Integrated Algebra/Geometry 2 classes; and a grade of "F" in his Auto Essentials class.

His second semester grades as of March 28, 2023 show the student is currently earning a grade of "B" in his English/Language Arts class; grades of "C" in his Study Skills, U.S. History, Foods, and Integrated Algebra/Geometry 2 classes; and grades of "D" in his Digital Design and Environmental Education classes.

Russell Debey, the Environmental Education Teacher, emailed the parents on March 24, 2023 at 4:02 p.m. reminding the student of several missing assignments and their due dates. The parents responded on March 25, 2023 at 11:33 a.m. stating:

> The student does not have the resources to do the nuclear assignment (website, addresses, links, books???) as there is nothing for him to reference to find the answers. I have had to give the student access to the internet on a difference device in order access websites to do the other assignments, as they are blocked on his MacBook. He has completed all of the other assignments in the 24 hours at home. These assignments are non-compliant with his IEP accommodations and he requires modified assignments. The student has shared that on at least one occasion, you've said "No, I'm not doing that" when he has asked about a modified assignment . . . He often sits unable to do assignments because content is blocked on his computer and he is not receiving modified assignments.

The parents emailed Mr. Debey again on March 26, 2023 at 12:36 p.m. to express their frustration with the access to assignments and resources on the computer. The parents indicated that the student reported that when he asks about not being able to access the links on his computer during class, Mr. Debey responds with "That shouldn't be the case". The parents explained:

> The student has clarified for me that most of the links provided in Environment Ed assignments are blocked on his MacBook. I've looked at the assignments personally and see that he is correct. He has attempted to use his phone on occasion during class by literally copying and emailing links to his phone – as parents we monitor his phone and have records of this being the case. This is so very non-compliant with his IEP accommodations and he needs modified assignments immediately.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(4) require the IEP to include a statement of the modifications that will be provided to enable the student to be involved in and make progress in the general education curriculum and to be educated and participate with other children with disabilities and nondisabled children. Federal regulations implementing the IDEA at 34 C.F.R. 300.320(a)(6) require the IEP to include a statement of the accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide 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 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, documentation found there were two IEPs in effect during the 2022-23 school year and both included a listing of accommodations/modifications to be provided to the student.

While the January 28, 2022 IEP showed that all of the accommodations/modifications were only to be implemented in the special education setting, USD #512 reported that this was an error and provided documentation showing how each of the accommodations/modifications was implemented in the general education settings during the first semester. However, a review of that documentation also found that all of the accommodations/modifications were not provided on a consistent basis in all classes and that the general education teachers did not understand what was required by some of the accommodations/modifications.

It is noted that during an internal investigation, USD #512 found that there was no documentation to support that the accommodations/modifications in the student's IEP were provided in the student's U.S. History class during the first semester. The LEA acknowledged "that staff may have failed to implement the IEP accommodations outlined for the U.S. History class".

It is also noted that previous to the filing of this complaint, USD #512 became aware of job performance issues with the student's IEP case manager. This district reported this situation was resolved in late January 2023 when the employee resigned from her position. This district indicated that the issues involved in this complaint were directly related to and caused by the job performance of that employee. However, interviews and documentation found this was not solely the cause as the general education teachers were not consistently and accurately providing the accommodations/modifications required by the student's IEPs.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to implement the accommodations/modifications in the student's IEPs during the 2022-23 school year.

Issue Two

ISSUE TWO: The USD #512, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to review and revise the IEP as required during the 2022-23 school year.

Positions of the Parties

The complainants alleged USD #512 failed to conduct an annual IEP team meeting to review and revise the student's IEP within the annual timeframe as required. The previous IEP was developed on January 28, 2022 and the annual IEP team meeting was not held until February 3, 2023.

The parents reported there was confusion related to the annual IEP team meeting which was originally scheduled for January 25, 2023. On January 24, 2023, the case manager sent home a draft version of the IEP which included the same accommodations/modifications included in the January 28, 2022 IEP. That IEP meeting was cancelled due to a snow day on January 25, 2023.

On January 26, 2023, the case manager contacted the parents, rescheduled the IEP team meeting for the following day, and sent a meeting notification via email at 1:10 p.m. Later that same afternoon, Emily Demo, Assistant Principal, called the parents and cancelled the meeting scheduled for January 27, 2023 because "not everyone needed for the IEP meeting was available".

The following week, school staff contacted the parents and rescheduled the IEP team meeting for February 3, 2023.

The parents reported that the accommodations/modifications in that IEP are now different from those presented in the draft IEP dated January 25, 2023 and that neither the IEP goal progress reports nor the accommodations/modifications were discussed at the February 3, 2023 IEP team meeting in order to review and revise the student's IEP.

The parents are also concerned that the IEP team was never reconvened to discuss the student's lack of progress towards his IEP goals, his poor grades, and the lack of the required IEP accommodations/modifications being provided for the student. The parent indicated they shared concerns with multiple school staff about these types of concerns during the 2022-23 school year; however, an IEP meeting was never scheduled to discuss their concerns.

The district acknowledged that the annual IEP meeting was not held within the required 365-day timeframe. The district acknowledged that lack of planning and an inopportune snow day caused this situation to occur. The LEA noted that they did obtain parent consent to extend the IEP meeting timeline but acknowledged this consent was obtained following the annual IEP due date.

The district believes this noncompliance was the result of the staffing concern noted previously and not a systemic issue. USD #512 reported and provided the date and PowerPoint presentations from the beginning of the school year trainings held during the 2022-23 school year for special education staff in regards to IEP meeting timelines.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #512.

The findings in Issue One are incorporated herein by reference.

Interviews and documentation found that the annual IEP was previously developed on January 28, 2022. A Notice of Meeting (NOM) dated January 10, 2023 was sent to the parents scheduling an IEP team meeting for January 25, 2023. The January 25, 2023 IEP meeting was cancelled due to a snow day.

A second NOM, also dated January 10, 2023, was sent to the parent re-scheduling the IEP team meeting for January 27, 2023. That meeting was not held.

A third NOM dated February 2, 2023 was provided to the parents to schedule an IEP team meeting for February 3, 2023. Interviews and documentation reflect that at least one of the student's parents attended this IEP team meeting.

Following the IEP team meeting, USD #512 provided the parent with a Prior Written Notice (PWN) proposing to update the student's math and classroom performance goals as well as to extend the student's IEP meeting date and noted the original IEP due date was January 27, 2023 which was being extended to February 3, 2023. The explanation for why the action was proposed stated, "Updating goals is proposed due to progress and demonstrated need. Extending the student's IEP date is proposed due to the school needing more time to collect data for the student's IEP."

Jeffery Hargrove, Special Education Teacher, emailed a copy of the third quarter IEP goal progress reports to the parents on March 21, 2023 at 3:44 p.m. The parents responded the next day and stated:

> I would like to note that this is the first time in 4.75 years that we've received an unsolicited progress report. What corrective action are recommended since he isn't meeting his goals? We have been throwing up red flags for YEARS, as he has yet to show progress in meeting his annual goals because SMSD [Shawnee Mission School District] is not providing the IEP accommodations as described in his IEP plan in all classes . . .We have yet to review any progress reports as part of his annual IEP meeting. We can't move forward as it is if the current IEP is showing insufficient progress, which are facts showing the IEP is not being implemented in all cases and ineffective in others. Can you please start with daily check-ins regarding executive functioning skills habit building, which is super challenging as it is with the current block-scheduling for someone who has ADHD . . . We also need credit recovery for the last semester Auto-Essentials due to lack of IEP support and computer removal . . . We also need make-up services for the student when he was without a computer (Jan 27th) in Digital Design and without IEP support in U.S. History . . .

The parents and the district both report than an IEP team meeting is scheduled for March 31, 2023 to discuss these concerns.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.322(a) and (b) require that school districts ensure parents are provided the opportunity to participate in IEP team meetings by providing notification of the meeting early enough to allow the parent to attend the meeting as well as including the purpose of the meeting to allow the parents the opportunity to prepare for the meeting.

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.

In this case, USD #512 provided the parents with IEP goal progress reports on March 21, 2023. The parents responded requesting changes be made to the student's IEP to address his lack of progress towards meeting his IEP goals. Both the parents and the district report an IEP meeting is currently scheduled for March 31, 2023 to discuss these concerns.

Interviews and documentation found that at least one of the parents of the student attended the February 3, 2023 IEP team meeting. The parents acknowledged the purpose of the meeting was to conduct the annual review; however, the parents reported that there was no discussions related to IEP goal progress nor the appropriate accommodations/modifications needed by the student to access the general education curriculum at that meeting. It is not clear if these discussions took place at the February 3, 2023 IEP team meeting; however, there is evidence that the district responded appropriately by scheduling an IEP team meeting following the third quarter IEP goal progress reports to discuss the ongoing parent concerns and the lack of student progress towards meeting his IEP goals.

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.

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, the IDEA requires the IEP to be reviewed and revised, if necessary, at least annually. There is no procedure in the law to extend the annual due date beyond the 12- months or the 365-days. Interviews and documentation show the current IEP was developed on February 3, 2023 which is beyond the 365-days allowed from the previous IEP developed on January 28, 2022. Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to review the student's IEP at least annually.

Following the February 3, 2023 IEP team meeting, the district obtained "consent" from the parent to go beyond the annual due date which indicates a fundamental misunderstanding of both the annual review process and the purpose of providing the parents with appropriate PWN. In this case, the PWN dated February 3, 2023 was not necessary in order to update the student's IEP goals. In addition, the action of extending the annual IEP team meeting date is not an appropriate action for which to seek consent as it does not relate to the identification, evaluation, or educational placement or the provision of FAPE (free appropriate public education) to the student.

Providing PWN when it is not required causes confusion for parents regarding when their consent is actually needed for an action to occur. It gives parents the impression that their procedural safeguards protections for due process are available in all instances when they might disagree with the IEP offered by the school district following an IEP team meeting.

Based on the foregoing, a violation of special education statutes and regulations *is also* substantiated for failing to provide the parents with appropriate prior written notice (PWN) during the 2022-23 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 implementing the 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) 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 this case, interviews and documentation found the district failed to implement all of the accommodations/modifications required in the January 28, 2022 IEP consistently in all settings. USD #512 acknowledged a lack of training for a long-term substitute teacher providing special education support in the U.S. History class contributed to this noncompliance.

B. 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.

In this case, interviews and documentation found USD #512 failed to review and revise the January 28, 2022 IEP until February 3, 2023, which is beyond the 12-months and 365-days allowed under the annual review requirements in the IDEA. The district acknowledged poor planning on the part of staff and an inopportune snow day caused the situation to occur.

C. 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, interviews and documentation found USD #512 provide the parent with PWN on February 3, 2023 for actions that did not require consent. The proposed changes in IEP goals do not constitute a change to the type, amount, or location of the special education and related services being provided to the student. In addition, the IDEA does not allow for a procedure for parents to provide consent in order to extend the requirement for a review of the student's IEP at least annually.

Based on the foregoing, USD #512 is directed to take the following actions:

1) Within 30 calendar days of the date of this report, USD #512 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 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) 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.

b) Comply with federal regulations implementing the IDEA Federal regulations at 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 34 C.F.R. 300.503(a) which require school districts to provide parents with appropriate 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.

2) No later than May 1, 2023, USD #512 will reconvene the IEP team to address the parent's concerns and requests related to a) the student's lack of progress towards his IEP goals, b) the parent's request for daily check-ins regarding executive functioning skills, and c) what accommodations/modifications should be provided, specifically a plan for how to address lack of computer access and the need for modified assignments and exams. USD #512 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) No later than April 15, 2023, USD #512 shall hold an IEP team meeting to develop a plan to provide the student with compensatory services and the necessary accommodations/modifications in order to have the opportunity to recover the Auto Essentials class credit. USD #512 shall provide SETS with a copy of the written plan for providing the compensatory services offered and the parents' 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) No later than May 1, 2023, USD #512 will update its written procedures related to long-term substitutes as originally proposed in the March 6, 2023 response to the allegations written by Ms. Demolien. No later than May 15, 2023, USD #512 shall

disseminate this plan and provide documentation that all special education staff and administrators in the district have received a copy.

5) No later than August 15, 2023, USD #512 shall provide training for all general education teachers who work at Shawnee Mission East High School regarding accommodations/modifications and their responsibility for implementing them in the general education classroom setting. No later than five days after completion of the training, USD #512 will provide SETS with a copy of the sign-in sheet documenting who received this training as well as any handouts and/or a copy of the presentation.

6) Prior to the beginning of the 2023-24 school year, USD #512 shall ensure that all of the student's general education teachers have received copies of the IEP accommodations/modifications, been trained on the implementation of these accommodations/modifications, and know who to contact if questions arise. USD #512 shall provide SETS with signature sheet signed by all of the student's general education teachers documenting that they have received this information prior to the first day of classes for the student during the 2023-24 school year.

7) No later than May 15, 2023, USD #512 shall will contact TASN to request that TASN conduct a training for all licensed and certificated special education staff, including IEP case managers, school psychologists, and administrators working at or with Shawnee Mission East High School regarding the IDEA requirements related to the requirements and procedures for providing parents with appropriate prior written notice. No later than five days after completion of the TASN training, USD #512 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 #512 will provide SETS with any handouts and/or a copy of the presentation.

8) Further, USD #512 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) as described below.

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, M.Ed., 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 FEBRUARY 24, 2023

DATE OF REPORT March 31, 2023

This report is in response to a complaint filed with our office by the parent, on behalf of her son, The student. Hereinafter, the student will be referred to as "the student." The parent will be referred to as "the parent." The complaint is against USD #259, Wichita Public Schools, hereinafter referred to as "the school district" or "the district."

Investigation of Complaint

The complaint investigator spoke with the parent on March 7, 2023, by telephone to gather any additional information the parent would like to provide about the complaint. Also on March 7, 2023, the investigator spoke by telephone with Ms. Amy Godsey, Mediation/Due Process Supervisor for the school district, regarding the allegations in the complaint.

The investigator provided both parties the opportunity to submit additional information in writing regarding the complaint and requested specific documentation from the school district. In response, the investigator received email communications from the school district providing requested documents, additional information, and a written response to the complaint. The investigator also received additional information by email from the parent.

In completing the investigation, the investigator reviewed the following:

- IEPs and Related Documents
    - Notice of Meeting (NOM) dated May 19, 2022, IEP dated May 23, 2022, and Prior Written Notice (PWN) and Parent Consent dated May 24, 2022
    - NOM dated September 23, 2022, IEP dated October 10, 2022, and PWN and Parent Consent dated October 14, 2022, IEP Meeting Notes dated October 10, 2022, and IEP Team Meeting Participants and Positions dated October 10, 2022

    - NOM and Waiver dated November 30, 2022, and IEP Meeting Notes dated November 30, 2022
    - Amendment form, 3-19-23; PWN, 3-19-23; and IEP dated 3-21-23
- Progress Reports, Behavior Data, and Grade Cards
    - 7-13-22, 12-16-22, and 3-8-23 IEP Progress Report
    - Behavior Data 8-15-22 to 10-7-22, 10-10-22 to 11-30-22, 1-4-23 to 3-8-23
    - Q1 Grade Card Oct 2022, Q2 Grade Card Dec 2022, and Q3 Grade Card Mar 2023
- Related Documents and E-mails
    - 1-31-23 Email String re No Follow Up to 11-30-22 IEP Meeting
    - 2-9-23 Email Parent to Godsey Requesting Assistance
    - 2-14-23 Godsey FW Email from Parent to Principal
    - 8-15-22 to Current Discipline Profile
    - 2022-23 School Year Calendar
    - Student Contact Logs
    - IEP Manager Notes 8-29-22 to 3-7-23
    - Written Statements from Staff, compiled 3-8-23 and 3-9-23
    - Parent's Supplemental Notes, provided March 7, 2023
    - District's Written Response, dated March 15, 2023

Background Information

This investigation involves an eleven-year-old boy who is enrolled in the sixth grade in his neighborhood middle school. The student has been determined eligible for special education under the category of Other Health Impairment and has diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Autism, and Anxiety. The student has an IEP with a behavior intervention plan (BIP) and currently participates in all general education core and exploratory classes with special education support.

Issues Presented

In her written complaint, the parent presented two issues:

1. The school did not implement the IEP as written, including special education support by a paraeducator and implementation of behavior intervention plan and accommodations; and
2. The school did not follow required procedures for amending the IEP to reflect changes agreed upon by the IEP team.

Issue 1: The school did not implement the IEP as written, including special education support by a paraeducator, behavior intervention plan, and accommodations.

Positions of the Parties

Parent contends that there have been multiple times during the 2022-23 school year when the district has failed to provide the special education paraeducator services, accommodations, and behavior supports in the general education classroom as required by the student's IEP and agreed upon by the IEP team. Examples provided by the parent include but are not limited to failing to provide paraeducator all day on occasion and during math class on several occasions, not providing the student the opportunity to type assignments, failure to front load transitions and provide a 5 and 2 minute warnings for when transitions will occur, not allowing the student to take breaks, and not allowing the student to use his phone alarm reminder for early passing period. Parent provided written notes and referenced emails to document examples, but indicated during the phone interview that these examples are not exhaustive but ones for which the parent had notes or email references. The proposed resolution offered by the parent at the time the complaint was filed was that "all staff be informed and held accountable for implementing the IEP, BIP and accommodations as written."

The school district response separately addressed the provision of accommodations and behavior intervention plan and the provision of a paraeducator. The school district contends that the accommodations and interventions were implemented consistently. The district's position is limited to the accommodations and interventions in the student's IEPs dated 5-23-2022 and 10-10-2023, which does not account for accommodations agreed to during the IEP meeting held November 30, 2023. The district response states: "The written statements from the student's IEP manager, teachers, and para educator are anecdotal, but do address each accommodation from the 10-10-22 IEP (staff were unable to implement any proposed or pending changes due to lack of finalizing such by the IEP manager)." [The issue of revising the IEP to reflect agreed-upon changes is addressed in Issue Two.] As for the provision of paraeducator services in conformity with the IEPs of the student, the school district, in its response, acknowledged that "within the documentation that was provided, it does appear there were likely times when the student did not receive special education support in the general education setting" but were unable to locate documentation to quantify the extent to which this service was not provided. Also in its written response, the school

district contends that "although some support time may not have been provided as required by the two IEPs covering the school year from August 15, 2022, to February 24, 2023, the student continued to make progress toward achieving his goals."

Applicable Statutes and Regulations

A student's IEP must be implemented as written. As required by 34 C.F.R. §300.101(a), a student who has been determined eligible for special education and whose parents have provided written consent to the provision of special education services must be provided a free appropriate public education (FAPE). Further, 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) and 34 CFR §300.323(a) requires districts to fully implement students' IEPs.

Investigative Findings

The following findings are based upon a review of the documentation provided and the phone interviews with parent and district:

1. The student is a student who has been determined eligible for special education and whose parents have provided written consent to the provision of special education services. The student is enrolled in and attending the 6th grade at the neighborhood middle school and currently participates in all general education core and exploratory classes with special education support. The IEP for the student which was in place at the time this complaint was filed was developed over three meetings on May 23, 2022, October 10, 2022, and November 30, 2022.
2. The 5-23-22 IEP in place August 15 through October 10, 2022, states that the student will "attend math core specials/elective classes daily with non-exceptional peers with para support." The 10-10-22 IEP states that "The IEP team met to discuss more challenging classes for [student] due to his abilities and testing results. He will be moved to receive special education services / support in general education classrooms for all classes. The IEP team feels this is the correct placement for [student]. A trial [sic] period from 10/17 to 11/17 will take place with [student] being in an Honors ELA and Honors Math class. If he is successful during the trial period, an amendment will be made to change his IEP information." The parent and school district both agree that the statement of service in the 10-10-22 IEP "receive special education services / support in general education classrooms for all classes" means that a special education teacher or paraeducator would provide services to the student in all classes.

3. The district was unable to provide logs or other records showing that it fully implemented the student's IEP with regard to paraeducator services. The district's written response acknowledged that "there were likely times when the student did not receive special education support in the general education setting" but were unable to quantify the missed service time from the available records. Documentation provided by the parent shows that a paraeducator was not provided to the student on several occasions, including all day on November 11, 18, and 21, and February 24, as well as during math from February 27 through March 3. In an email response to the parent from the principal regarding the paraeducator services on November 18, the principal shared that "when a para is gone, they request a sub but don't always get a sub." Additionally, the email indicated that when a teacher is absent and they cannot get a sub, there are times that they have to pull the paraeducators to cover classes that don't have a sub. Based on the documentation reviewed and phone conversations with both the parent and the school district, instances where paraeducator services were not provided were tied to school district practices when the school district is unable to secure a substitute for a classroom teacher and/or special education teacher who is absent and when the school district experienced the departure of an existing paraeducator that was not yet able to be replaced.
4. All the IEPs in place for the student for the 2022-23 school year required educators to provide several accommodations to the student in all settings or all instances, such as 5 minute breaks when showing frustration or anxiety, verbal/non-verbal (visual) reminders before all transitions, option to type assignments when preferred, and an area to calm away from others for the length of class.
5. The IEPs also included a behavior intervention plan which required several supports and strategies be used with the student, including visual schedule or contract to help with transitions and knowing what is next during the day, front loaded transitions with 5 and 2 minute warnings for when transitions will occur, think time of approximately 30 seconds to one minute when given a nonpreferred directive, directions in a calm voice with short statements and keeping directions to one or two steps.
6. Although the district provided written statements gathered from the student's teachers responsible for implementation of these supports and services that demonstrate knowledge of the accommodations and behavior supports required by the 5-23-22 IEP and that these accommodations and behavior supports are generally provided, the school district does not specifically track and could not provide a full log of the provision of the accommodations and behavior supports required by the student's IEP.

7. A review of the IEP managers notes showed several situations where the behavior intervention plan and accommodations would appear to apply but no information indicating implementation is noted. Some entries suggest that the behavior intervention plan or accommodation was not followed, such as on 2-21-23: "5th hour – [student] picking at his fingers. Poked finger with something; squeezing finger to make it bleed. Told him that was not acceptable because of blood borne pathogens. Explained what that meant. Said to put bandaid on it and leave it alone. Emailed mom; next time will be a write up. Already handed in paper with blood on it once." However, the behavior intervention plan in the student's IEP states that "When [student] gets overwhelmed or anxious, he can use self harming behaviors. This can look like: scratching/picking at sores on arms or legs and banging head on desk or wall." The response strategy to be used is: "Staff will react by trying to redirect and suggest other sensory items he could use [sic]. Staff will also use non-crisis intervention techniques to keep [student] safe."
8. Some changes to accommodations and behavior supports were agreed to during the October 10 IEP meeting were not immediately drafted and noticed to the parent during the meeting but were processed by October 14 and implemented by the start of the second quarter, October 17, 2022, as meeting notes indicate was discussed.
9. Additional changes to the IEP were discussed and agreed to during the November 30, 2022 IEP meeting, but the IEP was not amended and as such those changes were not provided to responsible staff and have been determined to have not been implemented between December 1, 2022, and March 21, 2023. These changes include, for example, the addition of alternative passing period, leaving 5 minutes before the dismissal bell between each class period and being allowed to use his phone to set an alarm as a reminder of the early passing period. One example of the failure to provide this accommodation noted by the parent included a teacher asking the student to show where in the IEP that accommodation is written because the teacher couldn't find it in the IEP.
10. The IEP progress reports document that progress was made toward all goals at each reporting period. Grade reports and student schedules show that the student's schedule has changed in several classes each quarter with a range of grades from F to A. The most recent grade card for the student shows all Bs and two for the student show 5 B's, 2 D's, 1 C, and one Pass. Discipline records log 6 incidents, including one, one-day in-school suspension.

Analysis and Conclusions

The allegation at issue is that the student's IEP was not implemented as written.

First, as required by 34 C.F.R. §300.101(a), a student who has been determined eligible for special education and whose parents have provided written consent to the provision of special education services must be provided a free appropriate public education (FAPE). There is no dispute as to the student having been determined eligible for special education and whose parents have provided written consent to the provision of special education services must be provided a free appropriate public education (FAPE).

The IDEA implementing regulation at 34 CFR §300.323(a) requires districts to fully implement students' IEPs. Further, 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 other words, the school district must implement the IEP as written.

Here, although the statements of staff support the conclusion that most of the student's accommodations and behavior supports were known and typically implemented, the district acknowledged that the staff statements offered as evidence of implementation did not include specific changes to the IEP agreed upon at the November 30, 2022 IEP meeting. Further, detailed examples provided by the parent credibly demonstrated that the student was not provided with all the IEP accommodations and behavior supports on all required occasions between August 15, 2022, and March 21, 2023, as required by 34 C.F.R. §300.323(a) and §300.17(d).

For the reasons stated above, this investigator finds that the allegation of a violation of IDEA regulations, specifically the failure to implement the IEP as required by 34 C.F.R. §300.323(a) and §300.17(d) *is* substantiated.

> Issue 2: The school did not follow required procedures for amending the IEP to reflect changes agreed upon by the IEP team.

Positions of the Parties

It is the parent's position that the school did not follow required procedures for amending the student's IEP to reflect changes agreed upon by the IEP team. This

resulted in services, accommodations, and behavior supports not being provided to the student and procedural rights of the parent being violated.

It is the position of the school district that there were procedural violations made in amending the student's IEP on three occasions and that those resulted in a procedural denial of FAPE to the student. Further, it is the school district's position that the violations denied the parent's right to meaningfully participate in the IEP process.

Applicable Statutes and Regulations

IDEA implementing regulation 34 C.F.R. §300.324(b)(1), requires that each public agency ensure that IEP teams review and revise the IEP of a child as appropriate, including to address the child's anticipated needs, lack of progress, or other matters. In accordance with 34 CFR §300.324(a)(6), "changes to an IEP may be made, either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP."

Further, 34 CFR §300.323(a) and (d) require that the school district ensure that each student with a disability is provided with the special education services required by the IEP and that each teacher and service provider are informed of their responsibility for implementation of the IEP.

IDEA does not provide a time frame for implementing an IEP after its development, but federal regulations require that each public agency must ensure 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." 34 C.F.R. §300.323(c)(2).

Parents must be afforded the opportunity to participate in IEP team meetings and decisions with regard to their child and have their input considered the development of their child's IEP, pursuant to 34 C.F.R. §300.322 and §300.324(a)(ii).

Investigative Findings

1. The findings of Issue 1 are incorporated herein by reference.
2. The relevant facts of this allegation are not in dispute in any material way. Based on the information reviewed during this investigation, including parent and school district emails, parent's supplemental notes, the district's written response, and a review of the meeting notes, IEPs, and prior written notices related to the 10-10-22, 11-30-22, 2-21-23, and 3-2-23 IEP meetings, the student's IEP was not amended to

reflect changes to the student's IEP discussed and decided on during IEP team meetings – the 10-10-23, 11-30-22, and the combination of the 2-21-23 and 3-2-23 IEP meetings.

3. In the school district's response, it was noted that it is the school district's stated procedures that "if the IEP cannot be completed during the meeting [annual review], a continuance of the meeting should be rescheduled to allow for completion of the IEP and the provision of the PWN to parents; or at a minimum, parent be provided a draft of the proposed changes/updates at the meeting to ensure the changes align with those agreed to during the meeting. If it is a non-annual IEP meeting, it is expected that the parent will receive a copy of the amendment form with the proposed changes detailed."
4. For the 10-10-22 IEP meeting, school district procedures for updating the IEP and noticing the proposed changes to the IEP during an IEP meeting were not followed. On 10-14-22, 4 days after the IEP meeting, the IEP manager emailed the parent a draft IEP with the proposed changes and a prior written notice and request for consent. Records show that the parent electronically signed consent on 10-14-22. The student's IEP date was changed to reflect that the IEP meeting held on 10-10-22 was an annual review but meeting records and the district's written response show that only parts of the IEP were discussed and amended and it was not an annual review. The revised IEP was not actually in effect until 10-14-22.
5. For the 11-30-22 IEP meeting, records show that the student's IEP was not revised to reflect the proposed changes discussed and agreed to during the meeting until March 21, 2023. On January 31, 2023, parent emailed the school inquiring as to why there was not follow up from the 11-30-22 meeting and no amendment has been completed in the two months since the 11-30-22 meeting. The IEP manager replied to her promptly, apologizing for not getting it done, and requesting to hold another meeting to discuss the student's IEP. That meeting was scheduled for 2-21-23.
6. On 2-9-23 and 2-16-23, the parent made contact with the district mediation supervisor, and they discussed her concerns. Information from both the school district and the parent show that the management of the 11-30-23 meeting and subsequent handling of the IEP revision process was not conducive to meeting procedural requirements or providing for meaningful parent participation in the IEP process. In response to that conversation, the mediation supervisor shared the parent's concerns with the district's Director of Behavior on 2-16-23 and requested she attend the IEP meeting on 2-21 to serve as a District Representative and advocate for the parent and child. Parent stated that the participation of the district director of behavior did have a positive impact on the 2-21-23 IEP meeting.

7. IEP team meetings were again held on 2-21-23 and 3-2-23. The 2-21-23 meeting was continued to 3-2-23. For these meetings, it is not clear from the meeting records whether additional changes or just clarification to the changes agreed to during the 11-30-22 IEP meeting were discussed, but as stipulated by the school district in its written response, these meetings are the third time the IEP was not revised to reflect the changes agreed to during the IEP meeting. The school district did not provide a draft copy of the proposed changes in the IEP to the parent with prior written notice or detail the changes on an amendment form with a prior written notice for several more days. A revised IEP was not completed and shared with responsible staff until March 21, 2023, 19 days after the 3-2-23 IEP meeting.
8. A string of emails between the IEP manager and the parent from 3-8-23 to 3-11-23 show that it was difficult for the IEP manager to provide a clear statement of the proposed changes to be reconciled from the 11-30-22, 2-21-23, and 3-2-23 IEP team meetings due in large part to the having to address changes from multiple IEP team meetings over a long period of time and relying on meeting notes to determine specific IEP changes. On 3-10-23 the IEP manager reached out by email to district staff for support in clearly drafting and including all changes in the prior written notice and amendment forms.
9. The school district provided prior written notice and consent form signed by the parent dated 3-19-23, an amendment form dated 3-19-23, and the revised IEP dated 3-21-23 to the investigator by email on March 22, 2023. The school district also submitted in their written response and at the request of the investigator, proposed corrective actions that would address the alleged violations.

Analysis and Conclusions

The allegation at issue is that the school district did not follow procedures for amending the student's IEP to reflect changes agreed upon by the IEP team.

On 10-10-22, 11-20-22, 2-21-23, and 3-2-23, the IEP team of the student met to review and revise the IEP of the child as provided for by 34 C.F.R. §300.324(b)(1). When revising the IEP, according to 34 C.F.R. §300.324(a)(6) the changes to the IEP may be made by the entire IEP Team at an IEP team meeting, or the parent and the school district may agree not to convene and IEP team and amend the IEP by developing a written document to amend or modify the IEP in accordance with 34 C.F.R. §300.324(a)(4). Here, the findings show that the IEP Team intended to revise the student's IEP during the IEP team meetings at the 10-10-22, 11-30-22, and 2-21/3-2-23 IEP team meetings.

Further, 34 C.F.R. §300.323(c)(2) requires the IEP of the student to be implemented "as soon as possible" after development. To do so, the school district must follow through on required procedural steps to so revise the student's IEP, including providing timely prior written notice and request for consent as applicable to the parents pursuant to 34 C.F.R. §300.503(a) and revising the student's IEP to reflect the changes agreed to by the IEP team during the IEP team meetings in accordance with 34 C.F.R. §300.324(a)(6). Additionally, within a reasonable amount of time after the revised IEP is finalized, the school district must make sure the revised IEP is available to staff and inform applicable staff of their responsibilities for implementing the IEP under 34 C.F.R. §300.323(d).

As to the 10-10-22 IEP team meeting, the findings show that the student's IEP team met on 10-10-22 to discuss changes to the student's IEP. Several changes were agreed upon, including removal of the student's reading goal and a change in educational placement to participating in general education for all classes. Although internal district procedures were not followed (providing PWN and a draft revised IEP during the meeting), a draft revised IEP and prior written notice of proposed changes was provided to the parent by 10-14-22 and a revised IEP was in place and available to staff by 10-17-22, within one week of the IEP meeting. Application of the requirement that an IEP be implemented "as soon as possible" requires consideration of factors such as the length of and reason for the delay. In this case, the investigator concludes that the delay was a reasonable time after the IEP team made the decisions and prior to the agreed-upon implementation date for these changes of the start of the second quarter, or October 17, 2022. (Note: Although there was some confusion to this point, the information reviewed shows that this was an amendment, not an annual review, and 34 C.F.R. §300.324(a)(6) provides that the IEP team was not required to review or redraft the entire IEP.) The delay did not specifically result in a failure to implement the IEP services by the anticipated start date and the revised IEP was made available to staff and staff were informed of their responsibilities under the IEP.

The IEP team again met on Nov. 30, 2022. During the meeting, it was decided that several changes to the student's IEP would be made. The student's IEP was not revised to reflect the decisions of the IEP team and made available to staff for implementation of the revised accommodations and behavior intervention plan until March 21, 2023 – 111 days after the November 30, 2022 IEP meeting and after much advocacy on the part of the parent, additional IEP meetings, and intervention of district special education staff.

The IEP team met again in two separate sessions on February 2, 2023, and February 21, 2023, in part to process and finalize the changes discussed at the November 30, 2022

meeting and to address additional concerns of the parent. As detailed in the investigative findings, ultimately, the IEP revisions developed by IEP team on 11-30-22 and 3-2-23 were made by developing a written document to amend or modify the IEP in accordance with 34 C.F.R. §300.324(a)(4). The IEP amendment document and prior written notice was provided to parents on 3-19-23 and a revised IEP was completed and shared with responsible staff on 3-21-23, 19 days after the final IEP team meeting to clarify and make revisions to the student's IEP, some of which dated back to the 11-30-22 IEP team meeting 111 days prior.

The school district has acknowledged and evidence supports the conclusion that the school district failed to properly revise and subsequently implement the student's IEP to reflect decisions made during IEP meetings on multiple occasions as required by and 34 C.F.R. §300.323(c)(2), §300.324(a)(6), and §300.503(a). It is noted that documentation provided by the school district during investigation shows the school district has, as of March 21, 2023, revised and implemented the agreed upon changes to the student's IEP.

Finally, the school district, in its written response, states that the procedural failures to properly and timely revise the student's IEP denied the parent the right to meaningfully participate in the IEP process. The IDEA outlines a number of procedural safeguards aimed at ensuring the full and effective participation of parents in the IEP process, including prior written notice of a district's proposal or refusal to revise the IEP as outlined in 34 C.F.R. §300.503(a), the obligation to consider and, where appropriate, incorporate parents' input into a child's IEP as provided for under 34 C.F.R. §300.324(a)(ii), and participation in IEP meetings and decisions about their child provided for under 34 C.F.R. §300.322. Although the parent was provided notice of meetings, participated in the meetings, and provided and had parent input considered during these meetings, that participation was undermined by the school district's failure to codify the decisions of the IEP team into revised IEPs and provide prior written notice of the proposed changes in a timely manner which also made it difficult for the parent to know and monitor the services the student was supposed to receive.

For these reasons, this investigator finds that the allegation of a violation of IDEA regulations, specifically the failure to properly and timely revise the student's IEP to reflect decisions of the IEP team and implement the IEP as required by 34 C.F.R. §300.323(c)(2), §300.324(a)(6), and §300.503(a) *is* substantiated and that these failures denied the parent meaningful participation required by 34 C.F.R. §300.322.

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 34 C.F.R. §300.323(a) and 300.17(d) which require that a district implement an IEP as written, 34 C.F.R. §300.324(a)(6) which requires that an IEP be properly amended to reflect decisions of the IEP team, 34 C.F.R. §300.503(a) requiring that parents be provided timely prior written notice when the district proposes to initiate or refuse to change the provision of FAPE to the child, and with 34 C.F.R. 300.323(d) that the new IEP be made available to staff and staff be informed of responsibilities under the IEP within a reasonable time of amending the IEP.

Therefore, USD #259 is directed to take the following actions:

1. Submit to KSDE Special Education and Title Services (SETS), within 12 calendar days of the date of this report, a written statement of assurance stating that it will comply with the conclusions of this report, including 34 C.F.R. §300.323(a) and §300.17(d) which require that a district implement an IEP as written, 34 C.F.R. §300.324(a)(6) which requires that an IEP be properly amended to reflect decisions of the IEP team, 34 C.F.R. §300.323(c)(2) which requires implementation of the IEP as soon as possible after development, 34 C.F.R. §300.503(a) which requires prior written notice be provided to parents in a timely manner, 34 C.F.R. §300.323(d) which requires staff responsible for implementation of a student's IEP have that IEP made available to them and be provided information on their specific responsibilities for implementing the IEP, and 34 C.F.R. §300.322 parent participation.
2. Within 30 calendar days of the date of this report, conduct an internal training session on matters related to the violations substantiated in this report. The training shall include:
    a. a review of related requirements,
    b. district guidance regarding general education teacher's responsibilities to implement a student's IEP,
    c. practical examples and scenarios, and individual reflection and review of current IEP implementation challenges and successes.

Participants shall include school-based members of this student's IEP team, all LEA representatives of the school, and all special education IEP managers of the school. The training should be conducted by USD 259 district personnel with knowledge of the

IDEA requirements addressed by this report and district policies and procedures. Provide a report of the trainers, training materials, training date, and log of attendees to KSDE SETS not later than 10 calendar days from the final date of the training.

3. Prior to the student's next annual IEP review and through the end of the school year, provide internal, district-level coaching support to the student's IEP manager in the application of the requirements addressed in this report. A log of engagement and relevant coaching activities must be kept and made available if requested by KSDE SETS.
4. Within 45 calendar days of the date of this report, undertake an internal review of the school district's existing IEP amendment procedures to ensure the district is correctly implementing 34 C.F.R. §300.324(a)(6) and IEPs are timely revised to reflect IEP team decisions. Report to KSDE SETS team summarizing the review activities conducted and any amendments to internal procedures made based on this review.
5. Within 20 calendar days of the date of this report, develop procedures for tracking the provision of this student's accommodations and BIP for the remainder of the 2022-23 school year. The tracking procedures must include regular communication between the school district and the parent and training for all responsible staff. The procedures developed and resulting documentation must be maintained and made available to KSDE SETS upon request.
6. 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.

Elena Lincoln
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 #379

DATE OF REPORT March 30, 2023

This report is in response to a complaint filed with our office by the parent, parent of son, the student. The student will be referred to as "the student" in the remainder of this report. The parent will be referred to as "the parent."

Investigation of Complaint

The investigators reviewed the complaint submitted on behalf of the student and reviewed the written response of the district. The district's response was sent by e-mail on March 9, 2023, by Anita Breen, Director of Special Education at Twin Lakes Educational Cooperative.

Background Information

The relevant facts in this case are as follows:

1. The student is enrolled in Clay County Public Schools USD # 379 for the current school year. (2022/2023 school year)
2. February 2019, student is found eligible for special education as a 3-year-old.
3. The student's primary exceptionality is categorized as a Developmental Delay in Social and Emotional Development.
4. August 8, 2022, the student transfers into Clay County Public Schools #379 from Geary County USD #475.
5. In August, Clay County Public Schools reviews the student's IEP, and with parent consent, implements special education and related services.
6. The student's IEP is behavior based with no academic support services.
7. November 8, 2022 – A manifestation determination review (MDR), regarding an incident that occurred on November 7, 2022, determines the students conduct is not a manifestation of the student's disability. Included in the MDR documentation is the following:

a. Behaviors exhibited by the student on November 7, 2022, which led to the student's suspension, is behavior the district found "represents a pattern of behavior".
b. The student's behavior included "aggressive behaviors in the general education and special education classroom including but not limited to: hitting, kicking, throwing rocks, eloping, yelling, cussing, verbal threats, destruction of property".
c. The district notes that the student has a "history of disruptive/aggressive behaviors for attention-seeking and in desire to control play".
d. The district notes that the student is making slow progress toward IEP goals.
e. The district notes the student has a record of numerous behaviors that subject the student to disciplinary action within the school year, consisting of 9 entries, resulted in no less than 16 days of in-school suspension (ISS) and out-of-school suspension (OSS), beginning on 9/1/2022 up until the incident on 11/07/2022.

8. Discipline records indicating that the student received a total of 28 days of ISS and OSS between September 1, 2022, and February 9, 2023.
9. January 23, 2023 – Email sent by district to the parent at 8:47 am, stating general education and special education service times (typical) and notes that psychological services will not be at the typical time but will be rescheduled for a later time (in the same day).
10. February 9, 2023 - Email sent from the district to the parent stating, "We are not required to give online services today since [the student] was here for ½ day" but "required IEP Zoom Services" will be provided on February 10, 2023.
11. February 10, 2023 – Email from the district to the parent stating there will be no school on February 13, 2023, that the student will be provided "services" through Zoom during the short-term suspension period (2-9-23 to 2-14-23), and that the parent can pick up an iPad at the district office.
12. February 10, 2023 – Email from the district stating that the student failed to join the scheduled zoom meeting for special education services on February 10, 2023, for both social work and SPED services time, and that the parent failed to pick up the iPad (laptop) and the SE worksheets ("The SE papers are the Social Emotional worksheets used during special education services).
13. February 13, 2023 – Email sent from the district to the parent again stating that the parent may pick up an iPad at the district office for use by the student to access special education services.
14. February 14, 2023 – February 15, 2023 – Email communication between the district and the parent discussing:
    a. The parent's inability to pick up the iPad due to the district doors being locked (the parent claims to have been at the office at 8 am, on the 14th).

b. The district's response claiming the doors were unlocked no later than 7:56 am and people were inside.
c. A Zoom schedule for special education services to be provided February 14-16, 2023.
    i. March 10, 2023 – Email from the district stating that the doors were open at 7 am, a new security lock had recently been installed on the door, so the door required "a tug" to open, and that a secretary "motioned for [the parent] to come in". (Email to investigators).

15. February 15, 2023 – Email from the parent indicating the student will miss special education services on February 15, 2023.
16. February 16, 2023 – Email from the district to the parent stating the Special Education Teacher would not be available to provide services on February 17, 2023.
17. February 20, 2023 – Email from the district reminding the parent that February 20 and 21, the district has meetings (about the student) and will not be able to provide special education services at the normal, scheduled, time on those days, but that services will be made up on February 22, 2023. (The parent responded that make-up time would not work)
18. February 20, 2023 – A PWN was provided to parent indicating:
    a. Beginning February 20, 2023, the special education services to be provided to the student, which are required in the IEP, and a schedule of days/times those services will be provided, through Zoom.
    b. Denial of the parent's request for academic/educational goals added to the IEP due to the student completing work above grade-level and no academic concern by the school team.
19. February 20, 2023 – Summary of the IEP Conference, which began at 1:00 pm and concluded at 1:58 pm, stating:
    a. How "regular education" will be provided. (The parent is to pick up a packet of work no later than 1 pm each Friday from the district office.)
    b. The student will have opportunities to ask questions and the district will daily provide with daily progress reports over Zoom about general education.
    c. An offer to provide free internet service in the home for the duration of the long-term suspension. (Parent declined).
20. February 20, 2023 – At the IEP Conference, the parent reported concerns about the student not having access to general education beginning February 9 – 20, 2023. The district offered to provide the missed work as a "make-up".(Parent declined).
21. February 21, 2023 –General education work is left at the district office for the parent to retrieve. (Email dated 2/22/23 indicated this)

22. February 22, 2023 – Email from the student's general education teacher to the student's school team stating that work was left at the district office on February 21, 2023, for the parent to pick up.
    a. Work for 2/10, 2/14, 2/15, 2/16, 2/17 was left at the office on 2/21/2023.
    b. Work for 2/20, 2/22, and 2/23 was left at the office on 2/20/2023.
    c. Pictures of work is taken and included in student file.
23. February 23, 2023 – Email from the district office to building principal that general education work is picked up by the parent.
24. February 23, 2023 – A list of general education lessons and assignments for February 10 through March 10, 2023, provided to the parent on February 23, 2023, as noted by the district.
25. February 26, 2023 – Email sent by the parent revoking consent for all special education and related services and withdrawing the student from the district. An inventory list of materials and technology the student will return to the school, includes general education materials.
26. February 27, 2023 – Letter from the district to the parent, stating that the district is "ready, willing, and able, to provide special education and related services in the IEP should [the student] decide to re-enroll".
27. February 27, 2023 – A PWN from the district to the parent stating that beginning on February 27, 2023, the student will no longer receive special education services due to parent withdraw from the district.
28. Daily service suspension log stating special education services and general education offered/received/missed, with notes on student participation. (Log does not include general education offering until 2/22/23)
    a. 2/22/23 – Student in attendance for social work and SPED services.
        i. General education noted by the district; "work for the week of 2/13-17/23 provided at the SAC office" (paperwork/lessons).
29. March 15, 2023 – Phone interview with Director of Special Education for Twin Lakes Educational Cooperative clarifying:
        i. General education work offered to the parent as "make-up" work during the IEP Conference held on the 20th (Work for the week of 2/13 – 2/17) but was declined by the parent.
        ii. The district provided the work anyway to the district office for parent retrieval. Work was available at the district office on 2/20 and 2/21.
30. March 15, 2023 – Email sent to Investigators from the district clarifying that "online math and reading programs used by all students" were "provided though [the student's] laptop, meaning the student "always had access to [the student's] reading and math curriculum".

31. March 20, 2023 – Phone conversation to clarify what reading and math programs were offered on the student's laptop. As noted by district, reading and math programs were work-at-your-own pace programs, and while they "may have been assigned, they were not lessons or curriculum."
    a. The district further noted was that the student would not have had access to other general education subjects prior to the IEP conference.
    b. Access to general education lessons was not provided because "work always came back undone anyway."

Issues

In the complaint, the parent raises the following issue:

> Issue One: Whether the student was provided general education curriculum during the student's suspension, from February 9 – February 20, 2023.

Analysis

> Issue One: Whether the student was provided general education curriculum during the student's short-term suspension, from February 9 – February 20, 2023.

We find the district did fail to provide the student with general education during the period in question, specifically on 2/10, 2/14, 2/15, 2/16, 2/17, and 2/20, resulting in a violation.

Under federal and state special education law, when a student has reached the 11th cumulative day of suspension in a school-year, commencing on the 11th day of suspension, and during any subsequent day or days of suspension, "special education and related services *must be provided*" that "enable the child to continue to participate in *the general education curriculum* and to progress toward meeting the goals set out in the child's IEP". (K.A.R. 91-40-34(b)(2); 34 C.F.R. 300.530(d)(4))(emphasis added).

Further, a Free Appropriate Public Education, which includes special education and related services, provided at no cost to the parent, and in conformity with an individual education program, requires specially designed instruction, which in part, ensures "*access of any child with a disability to the general education curriculum*, so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children. ((K.A.R. 91-40-2(lll)(2); (K.A.R. 91-40-1(z); 34 C.F.R. 300.17))(emphasis added).

OSEP guidance suggests that paperwork, without instruction similar to same age-peers, is not sufficient to ensure access of a student with a disability to the general education curriculum.

It is relevant, that when a student, who is not in-building, due to an OSS, or a student who is in-building, due to an ISS, has access to the general education curriculum on the day(s) that the general education curriculum was accessible to all students. Providing paperwork and lesson plans, even after the fact, especially when multiple days have transpired, is not a substitute for "access of any child with a disability to the general education curriculum". Further, refusal, by a parent, to accept an accumulated amount of general education paperwork, all at once, does not negate a district's responsibility to have provided access to the general education in a timely manner and in an instructional way.

In this situation, the student began OSS on February 9, 2023, after an incident which occurred at the school. The parent was called to retrieve the student around 1 pm that same day. Due to the student being at the school for part of this day, the student, did receive general education instruction on this day. Therefore, we find no violation on February 9, 2023.

On February 10th the student was at home for OSS. The student did not have access to the general education curriculum. An email from the school to the district Special Education Director states the student's laptop (iPad) and social emotional worksheets were left at the district office. However, there is no mention of any general education curriculum left, nor any indication that the student was offered or access to general education curriculum and instruction. Therefore, on February 10th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 13th school was not in session. When school is not in session, general education curriculum is not offered to any child in the district for that day. When general education is not offered to any student, it is not required to be offered to a student simply because that student is eligible for special education. Therefore, on February 13th, 2023, we do not find a failure to provide the student with general education.

On February 14th the student was at home for OSS. On this day, the student's laptop was still at the district office and emails state the parent planned to retrieve it. However, there is a dispute as to whether the parent had access to the building. The parent claims the doors were locked and that individuals inside took no action to permit her entrance. On the other hand, the district claims that the doors were unlocked, but that a new

locking mechanism made the door more difficult to open. The district claims that the individuals inside the building "waved" the parent in. Regardless of access to the building, it is the district's responsibility to ensure that a student receives FAPE, which includes access to the same general education curriculum and instruction provided to all students. In this case, even if the parent had retrieved the laptop, the student would still not have had access to the same general education curriculum and instruction similar to the student's general education peers. While the district states that the laptop would have provided the student with access to "reading and math programs available to all students", the district also confirmed that these programs are "not curriculum" and do not offer "lessons". Further, the district acknowledged that the district did not provide general education to the student because even when they did "work always came back undone anyway." Therefore, on February 14th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 15th the student was at home for OSS. There is no indication that the district provided any instruction for general education though Zoom or otherwise. Further, even though the laptop remained at the district office for most of the day, (the parent acknowledged that it was not retrieved until later in the afternoon), for reasons stated above, access to the laptop and programs on the laptop, would not have provided the student with access to the general education curriculum similar to the student's same age peers. Therefore, on February 15th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 16th and 17th, the student was at home for OSS. For similar reasons as listed above, the student did not have access to the general education curriculum on either day. Therefore, on February 16th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 20th the student was at home for OSS. The district did leave general education curriculum paperwork and outlined lessons at the district office on this day for the days of 2/20, 2/21, and 2/22. According to the district, this was after the IEP conference on February 20th, 2023. Given that the IEP conference did not begin until 1:00 pm, and did not conclude until 1:58 pm, and given that the district still had to gather and then send the paperwork/lessons to the district office, and considering the lateness of the day in which all this would have had to occur, and because this still failed to provide instruction, we find that the student did not have access to the general education curriculum on February 20, 2023, similar to same aged peers. Therefore, on

February 20th, 2023, we find the student was denied access to the general education curriculum, resulting in a violation.

On February 21st, general education curriculum was dropped off for the dates of 2/10, 2/14, 2/15, 2/16, and 2/17 at the district office. During the IEP conference on February 20th, the parent voiced concern that the student had not received general education while in OSS. The district acknowledged the missing general education and responded, during the conference, with an offer to provide the missed work. The parent refused this offer. Despite the parent's refusal, the district gathered the material and sent it to the district office on 2/21/23 where it remained. However, as stated earlier, a district has the responsibility to provide a student with access to general education curriculum similar to same aged peers, including access within a similar timeframe as same-aged peers, not after the fact. Further, the paperwork/lesson outlines did not include instruction similar to same aged peers.

In summary, we find that the district did violate state and federal law by failing to provide general education curriculum to the student for the dates of 2/10/2023, 2/14/2023, 2/15/2023, 2/16/2023, 2/17/2023, and 2/20/2023.

Conclusion

The allegation of a violation of federal and/or Kansas special education laws or regulations that the district failed to provide general education to the student during the suspension period *is* substantiated.

Corrective Action

Information gathered during this investigation has substantiated procedural noncompliance with special educational statutes and regulations. Violation(s) have occurred in the following areas:

> Failure to provide general education instruction, similar to same aged peers, in accordance with federal and state laws for the days of 2/10/2023, 2/14/2023, 2/15/2023, 2/16/2023, 2/17/2023, and 2/20/2023.
>
> Free Appropriate Public Education, which includes special education and related services, provided at no cost to the parent, and in conformity with an individual education program, requires specially designed instruction, which in part, ensures "access of any child with a disability to the general education curriculum,

so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children. ((K.A.R. 91-40-2(lll)(2); (K.A.R. 91-40-1(z); 34 C.F.R. 300.17)).

Based on the foregoing, USD #379 is directed to take the following actions:

1. Within 30 Calendar days of the date of this report, USD #379 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
2. Within 15 calendar days of the date of this report, submit to Special Education and Title Services the following:
    a. A written plan for how the district will provide general education instruction to students involved in any disciplinary action exceeding 10 cumulative or consecutive days. The plan must include general education instructional delivery model that is similar to general education instruction that non-identified and same-aged peers are to receive.
3. No later than April 15, 2023, USD#379 will submit documentation to Special Education and Title Services the following:
    a. Provide written correspondence to parent and propose compensatory general education instruction minutes that were missed as addressed in the findings of this complaint.
    b. Allow parent until April 20th, 2023, to respond to the proposed compensatory general education services either accepting all, part, or none of the proposal and submit her response to SETS.
        i. If parent fails to respond to proposal by April 20th, 2023, USD #379 has met its requirements for Corrective Action for #3.
4. Further, #379 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 within 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) as described below.

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

KANSAS
STATE DEPARTMENT OF
EDUCATION
900 S.W. Jackson Street, Suite 102
Topeka, Kansas 66612-1212

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)

23FC36 Appeal Review

FINAL DECISION

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 379
Clay Center Public Schools: 23FC379-003

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on February 28, 2023, by The parent, on behalf of her child, The student. In the remainder of this decision, the parent will be referred to as "the parent," and The student will be referred to as "the student." An investigation of the complaint was undertaken by complaint investigators 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 March 30, 2023. That Complaint Report concluded that there was a violation of special education statutes and regulations, and corrective action was ordered.

Thereafter, 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 parent, the complaint report, the district's appeal and supporting documents. 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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The

appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

ISSUE ON APPEAL

This complaint contained one issue: Whether the student was provided general education curriculum during the student's suspension, from February 9 to February 20, 2023.

The investigators found that the district failed to provide the student with general education services on six specified dates: 2/10, 2/14, 2/15, 2/16, 2/17 and 2/20.

However, in the report, finding of fact 10 cites an e-mail stating that "required IEP Zoom Services will be provided on February 10."

Finding of fact 11 states that an e-mail was sent to the parent, stating that the student will be provided services through Zoom during the suspension period from 2/9/23 to 2/14/23.

Finding of fact 12 states that the student "failed to join the scheduled zoom meeting for special education services on February 10…"

Finding of fact 14 cites an e-mail from the school discussing, among other things, "A Zoom schedule for special education services to be provided February 14-16, 2023."

Finding of fact 17 states that the district sent an e-mail stating that it would not be able to provide services on February 20 and 21, but would make up those services on February 22.

These findings of fact support the district's position that it contemporaneously offered services on 5 of the six dates the report says services should have been forthcoming. Only 2/17 is left unaccounted. These services were not provided for the reasons specified in the report but that does not negate the evidence that supports the district's position that the services for those dates were offered.

Finding of fact 22, along with the explanation of the action taken in finding of fact 22, on the last page of the report, states that on February 21 work was dropped off at the office with general education curriculum for all of the dates in question. The parent refused this offer. Even so, the investigators determined that the work was delivered.

On the last page of the report, the investigators said the work containing general education curriculum needs to be provided to the student "within a similar timeframe as same-aged peers, not after the fact." The committee agrees with that interpretation, but the evidence

indicates that educational services were offered virtually, and contemporaneously, for every day of suspension except for February 17. The February 21 offer of services appears to be a second offer to provide these previously offered services, based on the concerns expressed by the parent.

In addition, the district correctly points out that Kansas regulations, at K.A.R. 91-40-35(c), state that the school district must provide the special education and related services the child needs to "progress in the general curriculum…" K.A.R. 91-40-36, adds that when a child has been suspended from school for more than ten cumulative days in a school year, which is the circumstance in this case, "the special education and related services to be provided to the child during any period of suspension shall be determined by school officials of the agency responsible for the child."

The federal regulations are similar. In 34 C.F.R. 300.530(c)(i), the federal regulations state that when a child with a disability has been suspended for more than ten school days in a school year, the student must: "Continue to receive educational services, as provided in § 300.101(a), so as to enable the student to continue to participate in the general education curriculum, although in another setting. Note that § 300.101(a) refers to a Free Appropriate Public Education (FAPE). In addition, 34 C.F.R. 300.530(d)(4) says "school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed , as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum…"

As the district points out in its appeal, OSEP provided guidance stating that this provision acts as "modifying the concept of FAPE" during suspensions. In this commentary, OSEP explains that "An LEA is not required to provide children suspended for more than 10 school days in a school year for disciplinary reasons exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, the special education and related services the child does receive must enable the child to continue to participate in the general curriculum…"

OSEP goes on to explain that:

> *"Section 615(k)(1)(D)(i) of the Act and Sec. 300.530(d)(1) provide that a child must continue to receive educational services so as to enable the child to continue to participate in the general educational curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." We believe that using the statutory language in the regulation is appropriate because the Act specifically uses different language to describe a child's relationship to the general education curriculum in periods of removal for disciplinary reasons*

than for services under the child's regular IEP in section 614(d)(1)(A)(i)(IV) of the Act. Based on this difference, we decline to make the change requested.

We caution that we do not interpret participate'' to mean that a school or district must replicate every aspect of the services that a child would receive if in his or her normal classroom. For example, it would not generally be feasible for a child removed for disciplinary reasons to receive every aspect of the services that a child would receive if in his or her chemistry or auto mechanics classroom as these classes generally are taught using a hands-on component or specialized equipment or facilities."

The importance of this guidance, located in the Federal Register, Aug. 14, 2006, p.46716, is the clarification that this requirement, for instances in which a child with a disability is suspended for more than 10 cumulative days in a school year, is a modified form of FAPE. In the example provided by OSEP for auto mechanics or chemistry, OSEP says the services do not have to match "every aspect of the services that a child would receive if in his or her normal classroom." However, services do need to be provided during these suspensions that will enable the student to continue to participate in the general curriculum. There could be situations where a child is suspended for a day or two in excess of the 10-day limit, where school personnel could determine that no general education services are needed to enable the child to continue to participate in the general education curriculum, but, if there is any standard to measure the extent to which those determinations are justifiable, it is that those determinations must be reasonable.

In this case, the findings of fact in the report document that this student was offered services for all but one day of suspension during the time the suspensions were being imposed, and then services were offered again after all of the suspensions had been served.

CONCLUSION

The Appeal Committee finds that the facts of this case do not result in a violation of law. Accordingly, the conclusion in the complaint report is overruled and the corrective actions specified in the report are rescinded.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 8th day of May, 2023.

APPEAL COMMITTEE:
Stacey Martin
Amy Rzadczynski
Brian Dempsey

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #290
ON MARCH 7, 2023

DATE OF REPORT APRIL 7, 2023

This report is in response to a complaint filed with our office by the parent, on behalf of her son, the student. For the remainder of this report, the student will be referred to as "the student." The parent 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 April 5, 2023. On March 20, 21, 28, and 31, 2023 and April 5, 2023, the investigator spoke by telephone with Mr. Joe Vitt, Assistant Superintendent/Director of Special Education for the district. On April 5, 2023, the investigator spoke with Brandi Irby, the special education teacher who serves as the student's case manager.

In completing this investigation, the complaint investigator reviewed a Google file containing 138 pages of documents provided by the parent when filing this complaint. In addition, the investigator reviewed over 650 pages of documents provided by the district in support of their response to the complaint. The following documents were considered most relevant to the current investigation:

- Email dated May 19, 2021 from the parent to the building principal et. al.
- IEP for the student dated December 16, 2021 (signed by the parent on January 9, 2022)
- Staffing Record dated May 18, 2022
- IEP Amendment Between Annual IEP Meetings signed by the parent on May 18, 2022
- 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, 2022 (with parental consent dated September 16, 2022)
- Email dated August 15, 2022 from the director of special education to the parent
- Notice of Meeting dated August 15, 2022

- Email exchange dated August 24, 2022 between the parent and the director of special education
- Notice of Meeting dated August 27, 2022
- Email exchange dated August 29 - 30, 2022 between the director of special education and the parent
- Email exchange dated September 2, 2022 between the parent and the Title I teacher
- Email exchange dated September 6, 2022 between the director of special education and the parent
- Email dated September 9, 2022 from the director of special education to the parent
- Notice of meeting dated September 15, 2022
- Audio recording of IEP meeting of September 16, 2022
- Staffing Record dated September 16, 2022
- Draft Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated September 26, 2022
- Email exchange dated September 27, 2022 between the director of special education and the parent
- Email dated September 28, 2022 from the director of special education to the parent
- Email dated October 11, 2022 from the parent to the director of special education
- Email dated October 28, 2022 from the parent to the director of special education
- Email dated November 4, 2022 from the director of special education to the parent
- Email dated November 22, 2022 from the parent to the director of special education
- Draft IEP for the student dated December 2, 2022
- Email dated December 6, 2022 from the parent to the school counselor
- Email dated February 2, 2022 from the parent to the case manager
- Psychological Evaluation Developmental and Behavioral Sciences report dated July 28 through August 24, 2022 (original and corrected versions)
- IEP Progress Reports covering the period of May 2, 2022 through December 9, 2022
- Grade card for the student for the 2022-23 school year
- CBM Reading English Progress Monitoring Report covering the period of August 15, 2022 through March 27, 2023
- Phonics Screener for Intervention (PSI, Version 3.0 covering the period of August 16 through November 28, 2022
- Data sheets for special education social skills goal covering the period of August 18, 2022 through March 21, 2023

Background Information

This investigation involves an eleven-year-old boy who is enrolled in the fifth 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), Developmental Dyslexia, and Autism Spectrum Disorder (ASD) were subsequently identified. The student participates in Cognitive Behavioral Therapy with a private, licensed psychologist.

Issues

In her written complaint, the parent presented eight issues.

> Issue One: The district violated its child find duties by refusing to address the disability of Autism Spectrum Disorder and its impact on the student's social-emotional development resulting in a substantive deprivation of a free appropriate public education (FAPE) and associated educational deficits.

Applicable Statutes and Regulations

At 34 C.F.R. 300.111, federal regulations require states to have in effect policies and procedures to ensure that children with disabilities are identified, located, and evaluated.

Once a child with a disability has been identified, the services that are provided to that child under an IEP should never be dependent solely upon the child's exceptionality category or medical diagnosis. The IEP should address the individual child's prioritized needs based upon the information available to the IEP team and the child's ability to access and participate in the general education curriculum.

Reevaluation of the student is required every three years, or more often, if the district determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a re-evaluation (K.S.A. 72-3428). The information collected as a part of the reevaluation should be used to review the student's IEP, revising it if necessary, in accordance with K.S.A. 72-3438(h)-(l) as well as 34 C.F.R. 300.301 through 300.311.

The IEP team should review existing data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations. The first activity of the reevaluation team is to conduct a review of existing data. On the basis of that review, and input from the child's parents, the team should identify what additional data, if any, are needed to determine - among other things - the present levels of academic and related needs of the child, and whether any additions or modifications to the special education and related services are required to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate in the general education curriculum (K.S.A. 72-3428(i)(2)).

The district must obtain informed parental consent before conducting any reevaluation (K.A.R. 91-40-27(a)(1); 34 C.F.R. 300.300(c)). If a parent refuses consent for the reevaluation, the district may pursue the reevaluation of the child by utilizing procedural safeguards, including mediation.

Parent's Position

The parent asserts that the district has rejected a diagnosis of Autism Spectrum Disorder (ASD) provided by an outside evaluator and refused to address the social/emotional delays associated with that diagnosis, thereby depriving the student of a FAPE.

District's Position

It is the position of the district that the IEP team considered the report of the outside evaluation and did not reject the evaluator's ASD diagnosis, but questioned the need to incorporate some of the recommendations included in the report. The district asserts that the social/emotional needs of the student were being addressed under the student's IEP. The district supports a revision of the student's established social/emotional goal but contends that a reevaluation of the student by the district is needed in order to obtain updated and specific baseline information in areas of need so that annual goals can be revised appropriately.

Investigative Findings

The student was determined to be eligible for and in need of special education services in November 2021 under the category of Specific Learning Disability. Development of an IEP for the student was begun at an IEP team meeting on December 16, 2021. The

parent provided written consent for the provision of special education services on January 9, 2022, and services were initiated for the student on January 13, 2022.

The student's initial IEP noted that

> *"[The student's] history of deficits in his social behavior and emotional behavior can negatively impact his social skills, which can impede his ability to interact with same age peers."*

At the time the December 2021 IEP was developed, the student had, under a Section 504 Accommodation Plan, been participating in social skills groups facilitated by the school counselor in order to maintain peer relationships, friendships, and appropriately engage in social activities.

The IEP team developed the following social/emotional goal to address the student's needs:

> *"By the end of the IEP year [the student] will maintain peer relationships by earning a score of 14 when observed having a conversation, disagreeing appropriately, and accepting criticism and/or consequences based on the rubric on at least 2 out of 3 observations."*

The rubric to be used to assess the student's progress toward attainment of his annual goal is shown below:

Social Skills				**Score**
Looked at the person	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Used a pleasant voice	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Having a Conversation				**Score**
Listened to the other person	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Shared a related thought or question when conversation paused	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Disagreeing Appropriately				**Score**
Gave a reason for why he felt differently	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Listened to the other person	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Accepting Criticism and/or Consequence				**Score**
Accepted and stayed calm	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Total Score				

The December 2021 IEP stated that, in addition to other special education and related services, the student would receive 20 minutes of social skills instruction in the special education classroom once a week.

A team meeting was held on May 18, 2022 for the purpose of discussing the student's social /emotional needs. The group talked about the social skills rubric that was included in the December 2021 IEP, the appropriateness of that rubric, and how it was being used.

Discussion also focused on the delivery of social skills instruction to the student. The parent told the group about outside services for the student including an upcoming autism evaluation.

According to the May 18, 2022 Staffing Record, the group discussed "dates to hold mtg. in August to finalize goals, possibly August 25th @2:30 pm."

At the May 18, 2022 meeting, a proposed amendment to the student's December 2021 was presented to the parent. According to the proposed plan, a weekly 20-minute session of social skills instruction led by the school social worker would be added to the services included in the student's IEP as of the beginning of the 2022-23 school year. This session would replace the social skills support that had previously been provided by the counselor under the student's 504 Accommodation Plan.

The parent was provided with prior written notice of this proposed change on May 18, 2022 along with an IEP Amendment form. The parent signed the IEP Amendment form showing that she approved the proposed change. She also signed the prior written notice of the proposed change but did not check a box to indicate whether or not she agreed with the district's proposal.

On August 15, 2022, the new director of special education for the district sent an email to the parent. In his message, the director stated:

> *"In the IEP team meeting notes from May 2022, the team had agreed to meet on August 25th from 2:30 PM to 3:30 PM to finalize the behavior goal."*

The director wrote that he had attached a notice of the meeting and added:

> *"In visiting with the school psychologist (who attended the 05/18/22 meeting), she said you would share information (that may help the team with an appropriate goal) from*

> *[the student's] outside therapist before we meet on the 25th. What is the best way for you to share this information? When we have that input and yours, we can spend some time between now and the 25th determining what data is available, still needed, and how best to collect such data. This will form the baseline for the new or revised behavior/social/emotional goals."*

The director also stated in his email that he was sending a prior written notice form to the parent regarding the changes to the student's IEP proposed in May 2022. The director wrote that, in May, the parent had not checked a box to indicate whether or not she agreed with the proposed changes and stated:

> *"The amendment cannot be implemented without your preference being checked on this form. Until completed, we will follow the IEP and 504 as implemented before the amendment."*

The parent responded by email on August 15, 2022, writing:

> *"We will be unable to attend an IEP meeting on August 25th due to a scheduling conflict, I propose September 7, 2022."*

On August 24, 2022, the director sent an email to the parent asking:

> *"Can you meet on Sept 7th from 7:35 to around 8:15? We have been having staff out across the district due to COVID and are concerned about being able to cover the gen ed classroom teacher."*

The parent responded via email on August 25, 2022 stating:

> *"I would be unable to drop the children off at Sunflower (per school policy) until 7:35 am. 30, and even 45, minutes is not enough time for this important meeting."*

The parent proposed that the IEP team meeting be followed by the student's 504 meeting and "would need to be a few hours at a minimum, especially with a new diagnosis that has implications reaching into many aspects of his school life."

On August 26, 2022, the director responded by email stating:

> *"How much time would you like the team to plan for? We may need to have more than one meeting depending on the availability of substitute teachers."*

In a separate email exchange on August 26, 2022, the director and the parent discussed when the outside evaluation report from Children's Mercy would be available. The parent stated that the doctor "said he hoped to have it completed by early to mid-next week."

A copy of the outside evaluation report was provided to the district by the parent on September 2, 2022.

On September 6, 2022, the director of special education sent an email to the parent stating:

> *"We need to reschedule tomorrow's meeting to a later date to allow staff the opportunity to review the Children's Mercy report. Please look at your calendars for a possible meeting on September 16, 19, or 20th."*

The parent responded via email stating:

> *"That's unfortunate. We were looking forward to meeting tomorrow. I am only available on 9/16, so let's schedule for September 16th at 8:00am."*

On September 16, 2022, the parent gave consent to waive her right to a 10-day prior written notice and the team meeting was conducted for the purpose of considering the report of an outside evaluation provided by the parent. The Staffing Record shows that during the meeting, the parent expressed concern about the student's "soc/emot internalizing..." According to the record, the attorney for the parents who was present at the meeting also expressed concerns about the student's social skills as shown in the report and wanted to "build a plan based on that report."

During the meeting, the team discussed the need for further assessment of the student's skills in areas of need identified by the outside evaluator. After receiving a copy of the evaluation report, school team members had reviewed the document and felt that a deeper dive into the student's reported deficits would be needed in order to establish baselines for goal development. The audio recording of the September 16, 2022 meeting shows that these thoughts were shared with the parent by several school team members. The outside evaluators recommendation that the district conduct an FBA was also discussed.

At no point during the September 16 meeting did school team members state that a reevaluation would be conducted for the purpose of opposing the outside evaluators

diagnosis of Autism. Rather, school team members noted that the district's assessment data was not current and should be updated. Additionally, school team members stated that the student was not exhibiting in the school setting some of the deficits observed by the outside evaluator, and it would be difficult to write a goal to target those deficits without digging deeper into the student's needs.

The parent voiced strong opposition to any further assessment by the district, and the team discussion moved on to the topic of possible targets for goal development.

At the conclusion of the meeting, the parent checked the box on the May 2022 prior written notice form allowing the district to move ahead with the change in social work services associated with a social skills group for the student. The IEP team agreed to meet again on September 28, 2022 from 8 to 10 AM.

The director of special education sent an email to the parent on September 27, 2022 stating:

> *"We need to cancel/reschedule tomorrow's meeting. I will follow up later today. Sorry for the delay, but it could not be helped."*

The parent responded via email on September 27, 2022 writing:

> *"We do not agree to extending the IEP revision process further. The team agreed in May that IEP revisions were necessary and it's nearly October without resolution. This additional delay is unnecessary and detrimental to our child. We desire to get a revised, adequate IEP in place without delay. We are suggesting Monday, October 3 from 1:30-4:00 or Wednesday, October 5th from 9-10:30 am with advance receipt of the draft IEP..."*

The director replied on September 28, 2022 stating:

> *"With the new information provided to us from Children's Mercy, we want to make sure we address all [the student's] needs. While the latest evaluation report was informative, it does not provide us with [the student's] present levels of academic achievement and functional performance (related developmental needs) that are required for developing an appropriately revised and adequate IEP.*
>
> *I am proposing the following to guide the IEP team in determining the specifically designed instruction required by [the student] to receive FAPE. First, continue all*

services as outlined in [the student's] IEP and 504. Second, conduct a reevaluation to address the following areas:

- *[The outside evaluator] recommended the school conduct an FBA [functional behavior assessment] and provide ABA therapy at school. An FBA is an evaluation requiring your consent.*
- *[The outside evaluator] diagnosed [the student] with Autism Spectrum Disorder (ASD) and recommended Level 1 Support for Social Communication and Behavior. He identified nonverbal communication and reciprocating social or emotional interactions as areas of concern.*
    - *We need to determine baseline data of the specific deficits to determine the support required by [the student] to receive FAPE.*
- *[The outside evaluator] did not update academic assessments, specifically in reading. [The student's] initial evaluation was completed over a year ago, and his skill levels have changed. New assessment data is needed to determine new or revised IEP goals and services for reading.*
- *You share that [the student] experiences anxiety throughout the school day that he keeps hidden until he gets home. We need to collect information through observations, interviews, and questionnaires in this area specifically to guide the team in developing an appropriate goal.*
- *[The outside evaluator] administered the Social Language Development Test - Adolescent (SLDT-Adl), which was developed for use with adolescents in the age range of 12 through 17. We need will [sic] include one or more age-appropriate social language/communication assessments as a part of the reevaluation.*
- *Adaptive Functioning was indicated to be a significant deficit for [the student]. We need to assess his adaptive functioning in the school environment as part of this reevaluation to determine if significant deficits are impacting his ability to receive FAPE. This could include assessment such as the Vineland 3 Teacher Form.*
- *[The outside evaluator] mentioned possible dysgraphia and stated the Beery tests were conducted and documented in the report, but the results were not included. We need to see the Children's Mercy data and may need to perform additional assessments in this area.*
- *Finally, [the student] has met his current goals, which is another reason for conducting a reevaluation.*

Several books recommended in the Children's Mercy report addressed Executive Functioning. Do you see significant needs in this area that should be included in the reevaluation?

We can complete the reevaluation in less than 60 school days from consent. In the meantime, all services will remain the same. After I hear back from you, I will send the Prior Written Notice/Consent for Reevaluation Form."

In early October 2022, the parent filed an OCR complaint against the district.

On October 11, 2022, the parent sent an email to the director of special education stating:

"The lawyers have been in conversation about the IEP and testing topics. We are still needing more information before deciding how to proceed."

Through their attorney, the district proposed a restructuring of the student's social skills goal as a middle step before completing an FBA and other assessments in early October 2022.

The parties continued to negotiate through their attorneys. On November 11, 2022 - through the parties' attorneys - the district presented the parent with a formal request for consent for a reevaluation of the student. The notice explained the reasons for the proposed action as follows:

"[The student's] parents had him evaluated over the summer by the Developmental and Behavioral Sciences department of Children's Mercy Hospital. The parents have requested new IEP goals and services based upon the recommendations in the report dated 08/24/22.

The report does not contain school-related data that could be used for developing IEP goals or for determining appropriate, necessary services. The reevaluation is also needed to guide the team in determining which of the recommendations from Children's Mercy and the parents are necessary to allow [the student] to continued opportunity for receiving a Free Appropriate Public Education.

A reevaluation is needed for conducting an FBA as requested by parents and Children's Mercy.

The team considered revising [the student's] IEP based on the data contained in the Children's Mercy report and rejected this option since the report noted a lack of identified concerns in the school setting.

The team considered not conducting a reevaluation but rejected this option due to Children's Mercy report not containing adequate data for the team to make the decisions requested by Children's Mercy and the parents."

On November 22, 2022, the parent sent an email to the director of special education in response to his email of September 28, 2022 writing:

> *"Waiting to revise [the student's] IEP does not serve the child in need of an appropriate education. We have plenty of information for the team (including parents) to use to move forward with revising his IEP without waiting for an FBA to be completed. In short, we do not agree that further delay is necessary...deficits could be addressed, in part, by...requested IEP goals [self-advocacy, peer interactions, and understanding emotions] and special education services."*

On November 29, 2022, the parent submitted a request for a Due Process Hearing to KSDE. Controlling provisions regarding stay put were put in place, and the district continued to serve the student under the requirements of his December 2021 IEP.

The parent declined the district's attempt to convene an IEP team meeting in early December 2022. The parent was not available on the date suggested by the district and was, by the report of her attorney, unavailable any time during the month of December. The district submitted a request for mediation to KSDE, and a December 14, 2022 date was proposed for an IEP team meeting to be conducted after an already scheduled resolution session regarding the due process complaint.

The parties were not able to reach a resolution at the December 14, 2022 meeting, but agreed to continue to seek a resolution through mediation.

In early January 2023, through its attorney, the district proposed a draft IEP in advance of mediation regarding the due process complaint. Proposed changes to the social skills goal were included in the draft.

The parties met with the due process hearing officer in early February 2023. It was suggested by the hearing officer that the district conduct the FBA recommended by the outside evaluator. Prior written notice for evaluation was again presented to the parent through the parties' attorneys.

The parent withdrew her due process complaint on February 21, 2023. The parent has to date not yet provided consent for the completion of an FBA or a more complete reevaluation of the student by the district.

FAPE:

In her complaint, the parent asserts that the district violated its child find duties by refusing to address the disability of Autism Spectrum Disorder and its impact on the student's social-emotional development, resulting in a substantive deprivation of a free appropriate public education (FAPE) and associated educational deficits.

The student's grade card provides information regarding the student's general education classroom performance during the first three quarters of the 2022-23 school year. A grade mark of "M - Meets" indicates that the student can independently apply concepts and skills to meet grade level standards. A mark of "P - Progressing" indicates that the student is making progress toward independently applying concepts and skills to meet grade level standards.

For the first quarter, the student earned an "M" mark in 92% of the areas assessed (22 of 26). Four “P” marks (8%) were given for that quarter. For the second quarter, the student earned an “M” in 96% of the areas assessed (48 of 50). The student earned only 2 “P” marks for the second quarter. For the third quarter, 100% of the student's marks were “M.”

The section of the grade card labeled "Social Skills" contains 16 areas of assessment:

- Gets the teacher's attention
- Accepts No for an answer
- Uses appropriate voice tone
- Follows instructions
- Accepts criticism
- Greets others
- Disagrees appropriately
- Makes an apology
- Accepts compliments
- Asks for help
- Asks permission
- Stays on task
- Shares with others
- Works well with others
- Listens
- Participates in conversations

The student has earned “M” marks in all of the above areas for the first three quarters of the 2022-2023 school year.

The student is considered by his teacher to be among the top readers in his classroom.

The CBM Reading English Progress Monitoring Report provides information regarding the student's growth and shows that the student was performing at the fifty-first (51st) percentile on the broad reading measure at the start of the 2022-23 school year and at the seventy-second (72nd) percentile on a measure of decoding, word identification, and comprehension His overall reading at that same point fell at the thirtieth (30th) percentile.

The student demonstrated strong comprehension and recall skills in August and December 2022. He was averaging a reading rate of 120 correct words per minute and had improved to 173 correct words per minute by December.

According to the Foutas and Pinnell literacy assessment, the student was reading at a 6th grade level when assessed in December 2022.

The 95% Phonics Screener for Intervention, Version 3.0 shows the student correctly reading multisyllable Pseudowords (100% correct) on October 25 and November 8 and 28, 2022, up from 97% on August 17, 2022. Between August 16 and October 13, 2022, he demonstrated improvement in mastery of all advanced phonics skills assessed.

Math skills for the student are at grade level. The student recently represented the 5th grade in the school-wide Spelling Bee.

Summary and Conclusions

Child find requirements were designed to ensure that all children residing in a district who are in need of special education are identified, located, and evaluated. The student has, since December of 2021, been identified as child with a disability who was eligible for and in need of special education services. He has received special education services since January 2022.

As the parent stated during the IEP team meeting of September 16, 2022, "..the label doesn't determine the service..." Although the student was determined to be eligible and in need of special education services under the category of Specific Learning

Disability, the IEP team, which included the parent, completed and began implementing a plan which addressed - among other things - the student's social/emotional needs.

At the start of the 2022-23 school year, the parent notified the district that an outside evaluation had resulted in a diagnosis of Autism Spectrum Disorder. The report of that evaluation was presented to the district by the parent, and, on September 16, 2022, an IEP team meeting was held to discuss the report as well as possible revisions to the student's December 2021 IEP.

During the meeting, district staff raised questions about the testing results included in the evaluation report. There was extensive discussion about the student's needs and the discrepancy between how those needs were displayed in the home and school settings. While the district strongly advocated for a reassessment of the student's skills so that appropriate annual goals could be developed, no evidence was presented to show that the district has refused to consider factors related to the ASD diagnosis.

Throughout the 2022-23 school year, the student has continued to actively participate and make progress in the general education curriculum.

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

Issue Two: The district refused to properly provide Notice of Meeting and Prior Written Notices.

Applicable Statutes and Regulations

One of the procedural safeguards afforded to parents is the required Prior Written Notice of certain proposed special education actions. Prior Written Notice must be provided when 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 (K.S.A. 72-3430(b)(2) and 34 C.F.R. 300.503(a)(2)).

Unless there is an unusual circumstance, districts must provide parents with a Prior Written Notice within 15 school days in response to any parent request regarding these

areas. (See Kansas State Department of Education Memo, "Reasonable Time" to respond to parent request for evaluation, January 8, 2002.)

The district must take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The meeting is to be scheduled at a mutually agreed upon time and place. 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)). Special education statutes and regulations do not require a district to provided written notice if a scheduled meeting is cancelled.

Parent's Position

The parent asserts that she was not provided with prior written notice regarding the district's refusal to complete the revision of an IEP goal for the student during an IEP team meeting on September 16, 2022. The parent further asserts that she was not provided with notice of an IEP team meeting which was to be held on September 28, 2022 nor was she given prior written notice of the reason that meeting was ultimately cancelled.

District's Position

It is the position of the district that it was under no obligation to provide written notice regarding the cancellation of the September 28, 2022 IEP team meeting. The district further asserts that it has never refused to revise the student's social/emotional goal. While the district contends that reevaluation is needed to establish useable baseline data upon which to base revised goals, the district stands ready, willing and able to complete that reevaluation and has even offered to complete some IEP revisions prior to the completion of the reevaluation.

Investigative Findings

At an IEP team meeting on September 16, 2022, the attendees discussed the report of an outside evaluation obtained by the parent. As captured on an audio recording of the meeting, discussion topics included areas of need for the student that had been identified through the outside evaluation. School staff raised questions about that evaluation and spoke of the importance of the district completing a more detailed assessment/reevaluation of the student's needs in order to develop appropriate goals to

address those needs. At the end of the meeting, several broad areas of need were identified which could be addressed through annual goals.

The team proposed reconvening on September 28, 2022 to continue the process of revising the student's social/emotional goal.

On September 27, 2022, the director of special education sent the parent an email cancelling the IEP meeting of September 28, 2022. The director offered no explanation for the cancellation.

The parent replied via email, stating:

> *"We do not agree to extending the IEP process further. The team agreed in May that IEP revisions were necessary and it's nearly October without resolution. This additional delay is unnecessary and detrimental to our child. We desire to get a revised, adequate IEP in place without delay...We are suggesting Monday, October 3 from 1:30 - 4:00 or Wednesday, October 5th from 8-10:30 am with advance receipt of the draft IEP..."*

As outlined under Issue One, the director replied via email on September 28, 2022 with a plan to "guide the IEP team in determining the specially designed instruction required by [the student] to receive FAPE." The director proposed that the district conduct a reevaluation of the student to address areas of need identified in the outside evaluation report including:

- the completion of an FBA;
- the collection of baseline data with regard to communication, and "reciprocating social or emotional interactions;"
- obtaining updated skill measures related to the student's reading skills;
- collecting observational information regarding the student's reported anxiety;
- assessing adaptive functioning in the school setting;
- and determining whether additional assessment was needed to address possible dysgraphia.

The director asked the parent if she felt the student had needs with regard to "executive functioning" which should be further assessed.

The director wrote:

> *"After I hear back from you, I will send the Prior Written Notice/Consent for Reevaluation form."*

In the meantime, all services outlined in the student's December 2021 IEP would be continued.

On October 11, 2022, the parent sent an email to the director of special education stating:

> *"The lawyers have been in conversation about the IEP and testing topics. We are still needing more information before deciding how to proceed."*

In early October 2022, the district - through its attorney and the parent's attorney - proposed a restructuring of the student's social skills goal as a middle step before completing an FBA and other assessments.

The parties continued to negotiate through their attorneys. On November 11, 2022 - through the parties' attorneys - the district presented the parent with a formal request for consent for a reevaluation of the student.

The parent declined the district's attempt to convene an IEP team meeting in early December 2022.

In early January 2023, the district proposed a draft IEP in advance of mediation regarding the due process complaint. Proposed changes to the social skills goal were included in the draft.

Since the parent withdrew her due process complaint, the district has continued to propose dates for IEP team meetings to continue the discussion regarding revision of the student's IEP.

Summary and Conclusions

There is no legal requirement for the provision of prior written notice when a district cancels an IEP team meeting. A violation of special education statutes and regulations is *not* substantiated on this aspect of this issue.

Since no IEP team meeting was held on September 28, 2022, there is no legal requirement for 10-day notice of that meeting. A violation of special education statutes and regulations is *not* substantiated on this aspect of this issue.

The parent asserts that she should have been provided with prior written notice of the district's refusal to revise a goal in the student's IEP. However, the evidence indicates that the district has at no point refused to revise the student's IEP. Rather, the evidence shows that the district has requested parent permission to complete a reevaluation of the student for the specific purpose of collecting additional data to be able to appropriately revise the student's IEP.

The district has proposed a restructuring of the student's social skills goal, has offered dates for IEP team meetings to continue the discussion of an IEP revision, and has suggested draft revisions to the IEP. Since the parent's withdrawal of her due process complaint, the district has proposed additional dates for an IEP team meeting.

In short, the district has not refused to revise goals in the student's IEP, and thus notice of refusal to do so is not warranted. A violation of special education statutes and regulations is *not* substantiated on this aspect of this issue.

> Issue Three: The district did not provide movement breaks on January 27, 2023 and refused to provide accurate and complete documentation thereby depriving the student of the educational benefit of medically necessary breaks indicated in his 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.

Parent's Position

According to the parent, the student reported to her at the end of the school day on January 27, 2023 that he had not been afforded the "movement breaks" specified in his December 2021 IEP.

District's Position

It is the position of the district that although unusual circumstances on the day in question resulted in a change to the student's regular schedule, he was provided with hourly opportunities for a movement break.

Investigative Findings

The "Anticipated Services to Be Provided" section of the student's December 2021 IEP includes "Movement Breaks" to be provided on a daily basis. According to a notation under "Additional Information," these breaks are to occur "for 4 mins per hour during school hours (as deemed medically necessary by his neurologist).

The student's December 2021 IEP does not require the district to provide the parent with a record of the breaks afforded the student throughout the school day, but, on August 15, 2022, the director of special education sent an email to the parent that contained a link to a "proposed break schedule for [the student]." According to the proposed plan, the student would be provided with 5-minute movement breaks at 8:45, 9:40, 10:45, and 11:55 AM and at 12:55 and 2:50 PM. In addition, the student would have recess from 10:55 to 11:15 AM and from 1:30 to 1:50 PM.

The proposed movement schedule was subsequently slightly modified. As of the date in question, January 27, 2023, the student was to have movement breaks at 8:45, 9:40, an 11:55 AM and at 1:00 and 2:50 PM. Recess breaks continued at the times shown on the original proposal.

For his breaks, the student typically likes to play basketball outside or go to the gymnasium and shoot baskets. He sometimes will choose to go into the sensory room where he completes activities such as using the punching bag, kicking a ball, or running the obstacle course. The student does not leave the classroom or other setting for a break if engaged in a special activity such as DARE or Classroom Buddies, or when a special presenter is in the classroom, if his typically scheduled break time falls within a time when these activities are occurring.

By report of school staff, Friday, January 27, 2023 was an unusual day. Like most Fridays, this was an "Early Release" day with dismissal of students at 1:55 rather than 3:15 PM. At 8:15 AM, the student left his classroom and walked to the special education classroom for reading pullout, returning at 8:30 AM. At 8:40 AM he again left his classroom, moving to "specials." He had his usual bathroom break at 9:25 AM and then walked with his classmates through the "Wax Museum" in the 4th-5th grade hall and cafeteria to see if any of their Kansas Day costumes from last year were chosen for this year's display. From 10:30 AM to 10:45 AM, the entire class engaged in a Competitive Kahoot Brain Break, an activity wherein all students are up and moving in the classroom. An early 15-minute recess followed until 11:00 AM, when the student and his classmates walked to and from a folk music program in the group room for Kansas Day for 30 minutes, at which point the student went to lunch. After a 5-minute bathroom break at 11:55 AM and an opportunity to go to the nurse's office at 12:10 PM, the student participated in a DARE program until 1:00 PM when the student went to recess for 15 minutes. At 1:20 PM, the class walked from the fifth grade wing to the second grade wing to join their Buddy Class for a special activity. The student and his classmates walked back to their classroom at 1:50 PM to prepare for dismissal.

On February 2, 2023, the parent sent an email to the student's case manager regarding movement breaks for the student on January 27, 2023. The parent asked the case manager to provide her with:

> *"...the names of the individuals who provided the break, the location where the break was taken, [the student's activity for the break, and his response for each of the breaks."*

In response to this request, the district provided the parent with a copy of the home/school communication form which showed the student was provided with movement breaks:

- between 8:40 and 8:44 (moving to the specials classroom);
- between 9:25 and 9:29 (bathroom break and a walk to the Wax Museum);
- between 9:29 and 10:55 (Competitive Kahoot Brain Break);
- between 10:55 and 11:15 (recess);
- between 11:55 and 12:00 (lunch and a bathroom break); and
- between 1:00 and 1:04 (recess).

Summary and Conclusions

While the student's schedule for January 27, 2023 varied from the typical Friday schedule due to a number of special activities that occurred that day, he had hourly opportunities for movement as required by his December 21, 2022 IEP. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Four: The district had non-medically licensed evaluators questioning a medical diagnosis that they are unlicensed to provide and refused an independent evaluation at district expense to verify or refute the diagnosis.

Applicable Statutes and Regulations

After an initial evaluation or a reevaluation is completed by the district, if the parents disagree with the school's evaluation, they have a right to ask for an independent evaluation at public expense (K.A.R. 91-40-12(a)(1)).

If the parent provides the district with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if the evaluation meets district criteria (K.A.R. 9140-12(d)). However, the district is not obligated to implement recommendations made by an outside evaluator.

Parent's Position

The parent contends that the district refused to fully consider the results of an outside evaluation obtained at parental expense, did not incorporate any of the findings of that evaluation into the student's IEP as requested by the parent, and refused to pay for an independent educational evaluation to confirm or reject the outside evaluator's diagnosis of Autism without providing prior written notice of that refusal. The parent further contends that the district refused the parent's request for an IEP team meeting to review an updated report of the outside evaluation. According to the parent, the district failed to provide her with a notice of meeting or a prior written notice of refusal to conduct the requested follow-up meeting.

District's Position

It is the position of the district that while staff had questions regarding the outside evaluation provided by the parent, the district considered the report and the student's ASD diagnosis.

Investigative Findings

At the September 16, 2022 IEP team meeting, the team discussed, among a variety of topics, the results of the outside evaluation completed at Children's Mercy Hospital. As captured in an audio recording of the meeting, at approximately 31 minutes into the 2 hour and 30 minute meeting, the director raised questions regarding one of the instruments the outside evaluation report shows was used in the assessment. The parent is heard asking whether the team is unwilling to rely on "third party data." A team member responds, emphasizing the importance of using assessment data that is appropriate for the age of the student and questions whether the test administered was appropriate for students within the student's age group.

The school psychologist - at approximately 38 minutes into the meeting - also raised questions about an instrument used in the outside assessment, questioned the scoring standards used by the evaluator, and spoke about the breadth of the assessment. In response to the school psychologist's comments, the parent asked:

> *"So, are you suggesting that we need to have an independent eval at district expense?"*

The school psychologist responded, "No, I'm not." There was no further discussion regarding an independent educational evaluation.

During the remainder of the two and a half hour meeting, discussion centered on a variety of topics covered in the outside evaluation report including classroom accommodations, reading interventions, assistive technology, the completion of a Functional Behavior Analysis (FBA), and the student's participation in social groups. At no time during the meeting is anyone from the district heard stating that he or she rejected the outside evaluator's diagnosis of Autism Spectrum Disorder (ASD).

No evidence was provided by the parent to suggest that she made any formal request for an independent evaluation following the September 16, 2022 IEP meeting that would require the district to provide prior written notice of refusal.

Summary and Conclusions

While special education statutes and regulations require districts to "consider" the results of an outside evaluation presented by a parent, districts are not required to accept all or any of the recommendations provided by the outside evaluator or to incorporate those recommendations into the student's IEP. The district is under no

obligation to pay for an independent educational evaluation (IEE) simply because it has questions about the report of an outside evaluation obtained by the parent.

The audio recording of the September 16, 2022 IEP team meeting shows that district staff members had reviewed the report provided by the parent regarding an outside evaluation. Team member spoke specifically about various elements of the report. Team discussion regarding the recommendations included in the evaluation report reflect a "consideration" of the outside evaluation that complies with the requirements and intent of special education statutes and regulations.

The brief verbal exchange between the parent and the school psychologist about an IEE did not obligate the district to provide the parent with information regarding IEEs nor did the exchange trigger any requirement for the district to provide the parent with prior written notice of a refusal to support an IEE. Parents are afforded the right to request an independent educational evaluation if they disagree with an evaluation or reevaluation conducted by the district. The evaluation in question here was obtained at private expense by the parent. Requirements regarding IEEs do not apply.

Violations of special education statutes and regulation regarding IEEs and the consideration of reports of outside evaluations provided by parents are *not* substantiated.

> Issue Five: The district refused to revise IEP goals despite the team agreeing previously that revision was necessary thereby denying the student the opportunity to meet challenging and ambitious goals with resulting deprivation of FAPE.

Applicable Statutes and Regulations

When developing an IEP for a student, districts are required to include a statement of measurable annual goals, including academic and functional goals designed to meet the needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the child's disability (K.S.A. 72-3429(c)(2)).

In Chapter 4, the Kansas Special Education Process Handbook provides guidance to school districts regarding the development of measurable annual goals. According to the handbook, goals should be selected to meet the unique needs of the individual child

and should not be determined based on the category of the child's exceptionality or on commonly exhibited traits of children in a category of exceptionality. (See page 77, part b, Measurable Annual Goals.)

In developing an IEP, the team must establish the present levels of academic achievement and functional performance, beginning with general information that communicates a more global understanding of the child's needs and moving into baseline data which provides the starting point for each annual goal. Baseline data needs to be specific, objective, measurable (something that can be observed, counted or somehow measured), and collectable on a frequent basis. Non-examples of this would be "self-esteem" or "social awareness" without more specific descriptions of what it means. (See page75 of the Kansas Special Education Process Handbook, section 3.)

Parent's Position

It is the position of the parent that the district has refused to revise the student's annual goals as the parent requested but did not provide prior written notice regarding the reason for that refusal.

District's Position

It is the position of the district that the parent's request for a revision of the student's annual goals has not been denied.

Investigative Findings

The social/emotional goal included in the student's December 2021 IEP is as follows:

> *"By the end of the IEP year [the student] will maintain peer relationships by earning a score of 14 when observed having a conversation, disagreeing appropriately, and accepting criticism and/or consequences based on the rubric on at least 2 out of 3 observations."*

A rubric had been developed by the IEP team to be used to assess the student's progress toward attainment of his annual goal.

Social Skills				Score
Looked at the person	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Used a pleasant voice	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Having a Conversation				**Score**
Listened to the other person	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Shared a related thought or question when conversation paused	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Disagreeing Appropriately				**Score**
Gave a reason for why he felt differently	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Listened to the other person	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Accepting Criticism and/or Consequence				**Score**
Accepted and stayed calm	0-Did not do even with adult redirection	1-Did after adult redirection	2-Did without adult redirection	
Total Score				

At a meeting on May 22, 2022, the student's IEP team determined that revision of this goal would be discussed at a follow-up IEP team meeting after the start of the 2022-23 school year.

As has been noted previously, the parent obtained an outside evaluation of the student over the summer of 2022 which resulted in a diagnosis of ASD. The report of that evaluation was received by the district on September 2, 2022.

At the IEP team meeting on September 16, 2022, the team discussed the student's social/emotional needs. As heard on the audio recording of that meeting, there was a discussion of the structure of the student's current social/emotional goal as well as additional discussion of areas of concern such as "internalization," "self-esteem," and "self-advocacy."

District staff raised questions regarding some of the results included in the report of the outside evaluation obtained by the parent. At approximately the 42-minute mark in the meeting, there is discussion regarding the results of an adaptive assessment completed by the outside evaluator that placed the student at the second percentile. The director states:

> *"We wouldn't write an IEP goal using this test, because for one thing it's designed to give like once a year...If we were to address social language, then we would want to assess that, figure out what specifically are the deficits. If there are some that are significant and impacting his participation in class and school, his ability to achieve, etc., that's what we would then write a goal to address."*

There was discussion regarding ways that additional information could be collected to inform decision-making, on the student's participation in social skills groups, and other social/emotional needs.

As was evident in the audio recording of the September 16, 2022 IEP team meeting, the district and the parent held widely differing opinions regarding the student's social/ emotional functioning. While district staff did explain why additional testing was essential for the development of appropriate goals, at no time during the meeting did anyone from the district voice any unwillingness to revise the student's social/emotional goal nor did the district refuse to write goals related to other social/emotional needs.

The director of special education provided additional information regarding reassessment documented in an email to the parent dated September 28, 2022 as reported under Issue One.

Through the parties' attorneys, the district provided the parent with a draft revision of the social/emotional goal specified in the student's December 2021 IEP. A draft IEP was also provided to the parent by the district through the parties' attorneys in January of 2023 after the parent had filed a request for a due process hearing.

Summary and Conclusions

The district did assert that additional assessment by the district was needed to further explore areas of concern identified by the parent and the outside evaluator so that baseline data for the development of appropriate and measurable annual goals could be collected. However, the evidence does not support the parent's contention that the district refused to revise the social/emotional goal specified in the student' December 2021 IEP or to consider adding social/emotional goals for the student. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Six: The writing goal in the IEP was inaccurately measured and not aligned with grade-level writing expectations.

Applicable Statutes and Regulations

A student's IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability. Those goals should be crafted in such a way as to enable the child to

be involved in and make progress in the general education or advanced curriculum. The IEP must contain a description of 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 (K.S.A. 72-3429(c)(2) and (3). While teams are urged to consider identifying goals from the standards and benchmarks of the local district or from the Kansas Extended Standards, this requirement is not established in special education statutes and regulations.

Parent's Position

The parent asserts that the district's determination that the student has made progress on his writing goal is flawed. It is the position of the parent that the district erred in its determination that the student had met his annual goal, and, by doing so, the district denied the student a FAPE and failed to establish sufficiently challenging progress targets. The parent contends that the district refused to revise the student's written language goal.

The parent also states that she was not provided with any December 2022 reports regarding the student's progress toward attainment of his annual goals.

District's Position

It is the position of the district that the student has not been denied FAPE and the parent has been provided with a December report of progress toward attainment of his written language goal.

Investigative Findings Regarding the Written Language Goal

The student's December 2021 IEP, developed with the participation of the parent, contains the following written language goal:

> *"By the end of the IEP year, [the student] will earn a score of at least 21 on the rubric below after composing a final draft of a paragraph on 1/2 trials."*

The student's products were to be assessed using the writing rubric developed with input from the parent:

	4	3	2	1
Complete sentences	Produced complete sentences, correcting inappropriate fragments and run-ons.	One incomplete sentence.	Two or three incomplete sentences.	For or more incomplete sentences.
Topic Sentence	Produced a clear and logical topic sentence.	Topic sentence needed strengthened.	Topic sentence is not related to the paragraph.	Topic sentence was not evident.
Relevant Details	Provided a sufficient amount of supporting details relating to the topic sentence.	More supporting details relating to the topic needed.	Little supporting details were evident.	No supporting details were evident.
Transition Words	Used a variety of transitional words and phrases to manage the sequence of the paragraph.	Used some transitional words and phrases appropriately.	More transition words needed.	No transition words were evident.
Closing Sentence	Provided a conclusion that follows the paragraph different from the topic sentence.	Provided a conclusion but it needed strengthened.	Provided a vague or incomplete conclusion.	Conclusion was not evident.
C.U.P.	Used grade-level capitalization (C), verb usage (U), and punctuation (P).	Some C.U.P. errors	Several C.U.P. errors	Needs more time to correct C.U.P.

The goal was based on grade level standard W.5.5 - "With guidance and support from adults and peers, develop and strengthen writing as needed by planning, revising, editing, rewriting, or trying a new approach."

The student's baseline level of performance at the time the IEP was developed was 17 out of a possible 24 points.

According to the student's December 2021 IEP, "progress reports will be sent quarterly, aligned with the district's general education progress reporting practices. Parent(s) /Legal Educational Decision Maker(s) will be informed of the student's progress by written report."

Scoring of writing products for the 2022-23 school year was completed by the student's general education classroom teacher. Progress was reported by the student's special education case manager.

Progress on the written language goal was monitored on March 9, 2022. At that time, the student earned a score of 14. The evaluator noted that the student did not use any transitional words on his writing assignment.

When the student's progress was monitored on May 17, 2022, the student earned a score of 19. Use of transitional words had improved from a score of 1 to a score of 4.

Progress was assessed again on October 11, 2022. The student's writing product was given a score of 22. The parent argues that this writing product was scored incorrectly.

The student's progress on this goal was monitored again in December 2022 and March 2023. In December 2022, the student again earned a rubric score of 22.

The student's grade report shows that, for the third quarter of the 2022-23 school year, he was meeting all six of the grade level standards in the area of Writing. For the first quarter, the student had only met one of four standards. For the second quarter, he met three of five standards.

Summary and Conclusions Regarding the Written Language Goal

The student's IEP team - which included the parent - developed an annual goal for the student to address needs in the area of written language. That goal was monitored four times during the IEP year and again in March of 2023. The parent argues that incorrect scoring of the student's written product has resulted in a denial of FAPE to the student.

The scoring of individual student products does not fall under the purview of a complaint investigator, and this investigator will not substitute her judgement for that of a qualified educator or the parent by attempting to score the student's written product.

With regard to the provision of FAPE to the student, the student's annual goal is based on a fifth grade level standard. The student's rubric scores over the period of the IEP and into March 2023 have increased beyond his baseline. His grade report shows that, for the third quarter of the 2022-23 school year, the student was meeting all grade level standards in the area of Writing, an improvement over the two preceding quarters where he had only met 25% (first quarter) to 60% (second quarter) of those standards.

There is no evidence of a denial of FAPE. A violation of special education statutes and regulations is *not* substantiated on this issue.

Investigative Findings Regarding IEP Progress Reports for December 2022

Second quarter grade cards for students in the district were sent home at the end of the first week of January 2023.

The parent and the district were engaged in the due process hearing process at the time second quarter IEP progress reports were being completed. All communication between the parties was going through counsel.

The student's progress toward attainment of the goals established in his December 2021 IEP was monitored on December 9, 2022 as documented on a Progress Report

provided by the district. In an interview with the investigator, the student's case manager reported that she has a clear recollection of the parent having contacted her prior to Winter Break to report that she had only received one page of the December progress report.

The parent provided no evidence to show that she had notified the district that she was unable to access the second quarter progress monitoring report.

According to the district, a draft IEP was provided to the parent through her attorney on January 4, 2023; this draft also served as the December 2022 progress report for the student. Under the section of the proposed IEP entitled "Progress Reports" the following statement is included in both the student's December 2021 IEP and the draft IEP presented to the parent on January 4, 2023:

> *"IEP progress reports will be sent quarterly, aligned with the district general education progress reporting practices. Parent(s)/Legal Education Decision Maker will be informed of the student's progress by written report.*

The "yes" box is checked on both documents next to the following question:

> *"Is this IEP being used as the progress report for the current grading period?"*

Below this question is the following statement:

> *"If yes, this current IEP will be used as a progress report for the previous IEP goals because it is within 3 weeks prior to the progress report date."*

Summary and Conclusions Regarding Progress Reports for December 2022

Evidence provided by the district shows that the student made progress toward attainment of his annual goals as measured in early December 2022. The student's case manager has a clear recollection of communicating with the parent prior to Winter Break about how to see all pages of the progress report. Additionally, through the parties' attorneys, the district provided the parent with a draft IEP on January 4, 2023 which also served to report on the student's progress. A violation of special education statutes and regulations is ***not*** substantiated on this aspect of this issue.

IEP Revision

The parent's assertion that the district has refused to revise the student's IEP goal was addressed above under Issue Five.

Issue Seven: The district failed to provide access to records.

Applicable Statutes and Regulations

"Education records" is defined as "any document or medium on which information directly related to one or more students is maintained by a participating agency" (K.A.R. 91-40-50(2)). At K.A.R. 91-40-50, Kansas Special Education Regulations have adopted by reference provisions in 34 C.F.R. 300.612 through 300.624 regarding parental access to education records as well as the confidentiality of those records. The Family Educational Rights and Privacy Act (FERPA) of 1974, as amended, and State special education laws and regulations require schools to have reasonable policies in place to allow parents to review and inspect their child's education records.

Parents must be allowed to review and inspect those records that are directly related to the student and are maintained by the district. Districts must comply with a request from parents to inspect and review their child's education records "without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Secs. 300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made.

The right to inspect and review education records under section 34 C.F.R. 300.613 includes (at 34 C.F.R. 300.613(b)(2)) the "right to request that the agency provide copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records."

A teacher or special education provider's working file would not be a part of the child's education record. FERPA regulations, at 34 C.F.R. 99.3, state that the term "education records" does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record."

Parent's Position

The parent asserts that the district has failed to provide her with access to educational records which she has requested.

District's Position

It is the position of the district that the parent was afforded an opportunity for an in-person review of the student's educational records and has been provided with copies of all educational records regarding the student.

Investigative Findings

Title I Records:

On February 7, 2022, the parent sent an email to the assistant director of special education requesting "information regarding the Title services that [the student] received both in the Fall of 2021 and prior." Because this request was made more than one year prior to the date that this complaint was received by KSDE on March 7, 2023, this aspect of this complaint was not investigated.

However, on September 2, 2022, the parent sent an email to the Title I teacher stating that the parents had not been able to inspect records related to the student's Title I services. The parent wrote:

> *"I am formally requesting AGAIN that all Title records be sent via USPS mail on or before 9/09/22."*

The director of special education sent an email to the parent on September 9, 2022, seven calendar days after the parent's request. Attached to the email were Title I records for 2nd through 4th grade.

Test Protocols:

The parent asserts that, following an IEP team meeting on May 19, 2021, she requested copies of "ALL of the actual tests that [the student] took with the evaluative team - not the results as interpreted in the draft without delay." According to the parent, the district did not respond to her request, nor did the district provide her with the test forms she requested.

No evidence was provided by the parent to show that she repeated her request for access to this information during the 12-month period covered by this complaint. However, in her complaint, the parent states that she was able to view these documents at the district Board of Education office on September 16, 2022. By providing the parent with access to these educational records, the district met the requirements established by FERPA and special education statutes and regulations.

The parent states that after viewing the records, she asked for "copies of everything we could get." Some test protocols were provided to the parent by the director of special education via email on September 16, 2022. Copies of the requested test protocols were provided to the parent through her attorney as a part of the due process hearing process.

Social Group Records:

On October 28, 2022, the parent sent an email to the director of special education which included a number of requests. Among those requests was the following:

> *"Additionally, we are formally requesting all data from social-emotional groups from August 2021 - the present including date, provider, skills, etc. be sent by 11/04."*

The director responded "this information is not readily accessible, takes considerable time on the part of staff to collect, and will not be available before the [Section 504] meeting on Tuesday."

On December 6, 2022, the parent sent an email to the counselor stating:

> *"Weeks ago, I requested the social-emotional group record, including date, provider, and topics covered."*

The file submitted by the parent as a part of her complaint included a single page listing of dates when social skills groups were held and the skills that were covered on each date. The record begins on January 14, 2022 and ends on April 26, 2022. The record was developed by the counselor who led those sessions; that individual is no longer an employee of the district.

It should be noted that this document would not be considered an "educational record" under FERPA (Family Educational Rights and Privacy Act of 1974) or special education statutes and regulations. It contains no personally identifiable information regarding the

child (K.A.R. 91-40-50). While nothing would prohibit the parent from asking for this information, the district would not be required to produce this document when a parent asks for copies of the student's records and would be under no obligation to provide the document under the timelines established with regard to educational records.

No additional educational records related to the student's social skills group are maintained by the district.

Confidential Marking of Records:

The parent asserts that "Confidential" markings on documents provided by the district during the due process hearing process was confusing and limited her ability to "use the educational records as we need to." The parent wants the district to provide her with unmarked copies of all documents which are not actually "confidential" in nature.

A formal complaint must allege a violation of a state or federal special education law(s) or regulation(s). While special education statutes and regulations address a parent's access to records, the marking of documents for a due process hearing is not relevant. In this case, the parent states in her complaint that she has been provided with copies of the documents she had requested.

Summary and Conclusions

The district has provided access to all education records requested during the 12-month period covered by this complaint, and has, in addition, provided copies of these documents. In response to the parent having requested a due process hearing, the district provided the parent with copies of all the student's education records developed prior to December 1, 2022. A violation of special education statutes and regulations is *not* substantiated on this issue.

Issue Eight: The district substantively denied the student a FAPE by violating its responsibility regarding parental participation and communication.

Applicable Statutes and Regulations

The required members of an IEP team are specifically identified and described in state and federal statutes and regulations (K.S.A. 72-3404). Members of the team must include:

- the parents;
- a classroom teacher of the child;
- at least one special education teacher or special education service provider;
- a school representative;
- a person who can interpret the educational implications of evaluation results; and
- others with special knowledge or expertise regarding the child.

The right of parents to participate in developing their child's IEP is a cornerstone of IDEA (Individuals with Disabilities Education Act). (See 34 C.F.R. 300.501(b); 34 C.F.R. 300.321(a)(1); and 34 C.F.R. 300.503(a).). For that reason, it is critical for school-based IEP team members to discuss and genuinely consider the parent's input at IEP meetings.

School team members are not required to agree with the parent or to change the IEP merely because the parent desires a change. Meaningful participation means that the team must listen to and consider parental input and, if appropriate, revise the IEP based on that information.

An IEP team should work toward consensus. However, if an IEP team is unable to come to consensus, the school has the ultimate responsibility to ensure that the IEP includes services that the child needs in order to receive a FAPE.

Parent's Position

The parent asserts that the district's refusal to hold an IEP team meeting on September 28, 2022 and ongoing refusal to revise the student's IEP have served to limit parental participation.

District's Position

It is the position of the district that it has actively attempted to work with the parent to achieve consensus regarding the needs of the student and the development of his IEP.

Investigative Findings

In her complaint, the parent writes:

> *"The district attempted to force a signature on their re-evaluation requests by refusing to update the IEP. The parents were anxious to get the agreed upon fixes into the IEP before considering new testing and additional data. However, despite parents having the right to make decisions about signing a re-evaluation, the district attempted to*

'strong arm' them by limiting their ability to call an IEP meeting. This is an attempt to limit a parent's participation and is a substantive violation of FAPE."

Summary and Conclusions

While the parent asserts that the district's proposal to reevaluate the student has been nothing more than an effort to deny services to the student and to negate her participation in the development of the student's IEP, the district believes that a deeper dive into the needs identified by a recent outside evaluation is essential to the development of appropriate goals.

At the core of special education statutes and regulations is a requirement that the IEP for a student and the annual goals therein should be based on the individual needs of the student. Districts are required to base goals not on broad concepts but on specific, measurable data that allows for repeated checks on student progress toward attainment of those goals. After being presented with the results of a new outside evaluation, it was the professional opinion of the district that the results reported by the outside evaluator, while meaningful for the development of a diagnosis of ASD, did not provide the kind of information the team needed in order to create appropriate IEP goals for the student. Further, the outside evaluator himself had recommended that the district complete additional testing.

District staff members attempted during the IEP team meeting of September 16, 2022, to explain their reasons for wanting to get more information about the student - particularly because the parent and school staff held widely differing views of the student's needs.

As noted in previous issues in this complaint report, the director of special education sent an email to the parent to offer a plan to move forward to address the assessment needs his staff had spoken of in the September 16, 2022 IEP team meeting, and asked for the parent's feedback. The parent, however, remained resolute, insisting that only after goals were revised would she consider allowing the district to complete some portion of the evaluation they believed was needed in order to revise those very goals.

Special education statutes and regulations require districts to encourage parent participation, but when the parties cannot reach consensus, the district has a professional obligation to the student to act in a manner that best serves the student. This investigation has shown that the parent has consistently played a very active role in all discussions and in all decisions that have been made on behalf of the student, and

that the district has actively considered her input. A violation of special education statutes regulations is *not* substantiated on this issue.

Corrective Action

Information gathered in the course of this investigation has not substantiated noncompliance with special education statutes and regulations on 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
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 MARCH 17, 2023

DATE OF REPORT APRIL 17, 2023

This report is in response to a complaint filed with our office on behalf of the student by his education advocate, the advocate. In the remainder of the report, the student will be referred to as "the student." The education advocate will be referred to as "the education advocate" or "the complainant." The child lives with a foster family and in this report foster father will be referred to as the "foster father," "foster parent" or "custodial parent." Foster father's former wife is referred to as "foster parent."

The complaint is against USD #259, Wichita Public Schools. In the remainder of the report, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #259.

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 17, 2023, and the 30-day timeline ended on April 17, 2023.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, spoke to the education advocate by telephone on March 17, 2023, to clarify the issues in the complaint. In addition, Gwen Beegle interviewed the education advocate on March 31, 2023.

Gwen Beegle and Donna Wickham interviewed Dr. Erica Shores, USD #259 Executive Director of Student Support Services and the principal of Clark Elementary, Ms. Lichelle Alford on March 31, 2023. Gwen Beegle interviewed Robin Atkins, the foster father, by phone on April 1, 2023 and Denise Hunter-Mitchell, USD # 259 School Social Worker, by phone on April 4, 2023. Charmetra Bell, USD #259 School Psychologist, responded to investigator questions via email on April 3, 2023.

The Complaint Investigators also received emails from the education advocate and USD #259 between March 17, 2023, and April 11, 2023.

In completing this investigation, the Complaint Investigators reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed, the following materials were carefully read and used as the basis of the findings and conclusions of the investigation:

Documents and Reports:

- Clark Elementary Student Contact Log, Entries September 13, 2020 - January 24, 2023
- Assessment and Research Newsletter, August 2020
- USD# 259 Board of Education Policies 1464 and 5113.
- KSDE Dyslexia Screening and EOYA, September 21, 2021
- USD #259 Assessment Schedule 2022-2023
- Student Daily Attendance Profile for the student, 2022-23 School Year
- Wichita USD #259 School Year Calendar, 2022-23
- Student Discipline Profile for the student, 2022-23 School Year
- Daily Attendance Profile for the student, 2022-23, with entries from August 17, 2022 to February 3, 2023.
- Attendance Report for the student (August 15, 2022 - February 3, 2023)
- Daily Attendance Calendar for the student, 2022-23 School Year
- Elementary Progress Report for the student, 2022023 School Year, Quarters 1-2
- Suicide Protocol Parent Notification Statement for the student, dated October 6, 2022
- School sign out sheet, with entries for October 6, 2022 and January 10, 2023
- Letter from Denise Hunter-Mitchell (Clark Elementary Social Worker) and Nancy Stout (Truancy Coordinator) to Mr. and Mrs. Robin Atkins dated October 19, 2022
- Prior Written Notice for Evaluation and Request for Consent dated October 31, 2022 and signed by education advocate on October 31, 2022
- Parent Consent for Electronic Communication, dated November 1, 2022 and signed by education advocate on January 12, 2023
- Disciplinary Action Report for the student dated November 2, 2022
- Disciplinary Action Report for the student dated November 3, 2022
- Disciplinary Action Report for the student dated November 4, 2022
- FastBridge Assessments A.S. included with email dated November 8, 2022
- Disciplinary Action Report for student dated January 19, 2023
- Disciplinary Action Report for student dated January 24, 2023

- Notice of Meeting to review evaluation, determine eligibility and develop the IEP dated January 25, 2023 for a meeting on February 14, 2023.
- Functional Behavior Assessment for the student dated February 13, 2023
- Multidisciplinary Team Report for the student dated February 14, 2023
- Proposed IEP for the student dated February 14, 2023
- IEP Signature Page for the student dated February 14, 2023
- IEP and 504 Meeting notes for the student dated February 14, 2023
- Prior Written Notice for Identification Initial Services, Placement, Request for Consent dated February 14, 2023 and signed by the educational advocate on February 22, 2023
- Prior Written Notice for Other IEP Change in Services dated March 7, 2023 not signed

Emails:

- Email from Heather Baum to Rochelle Renollett (Administrative Assistant, Clark Elementary) dated August 29, 2022 at 12:06 p.m.
- Email from Heather Baum to Ms. Renollett dated September 2, 2022 at 3:00 p.m.
- Email from the education advocate to Charmetra Bell (School Psychologist) dated September 13, 2022 at 12:56 p.m.
- Email from the education advocate to Ms. Bell dated September 13, 2022 at 1:13 p.m.
- Email from Ms. Bell to the education advocate, Martine Bolton (School Nurse), Denise Hunter-Mitchell (Clark School Social Worker and Latchkey Director), and Lichelle Alford (Clark Elementary Principal) dated September 13, 2022 at 3:25 p.m.
- Email from the education advocate to Ms. Bell dated September 14, 2022 at 5:57 a.m.
- Email from Miss Bell to the education advocate dated September 14, 2022 at 12:05 p.m.
- Email from the education advocate to Ms. Bell dated September 14 at 12:55 p.m.
- Email from Ms. Bell to the education advocate, Ms. Bolton, Ms. Hunter-Mitchell, and Ms. Alford dated September 14, 2022 at 1:23 p.m.
- Email from Ms. Bell to the education advocate dated September 30, 2022 at 2:36 p.m.
- Email from the education advocate to Ms. Bell, Ms. Alford, Ms. Hunter-Mitchell, Ms. Bolton, Mitzi Jones (Behavior Intervention-Elementary), Michelle McKnight (Clark Elementary Counselor) dated October 2, 2022 at 6:42 p.m.
- Email from the education advocate to Ms. Alford dated October 13, 2022 at 12:00 p.m.
- Email from the education advocate to Michelle Stewart (Third Grade Teacher) dated October 13, 2022 at 8:28 p.m.
- Email from Darla Nelson-Metzger (Families Together) to the parent advocate, Lydia Newrath (Case Manager, St. Frances) and Jerry Cress (Educational Coordinator, St. Francis) dated October 17, 2022 at 10:19 a.m.

- Email from the education advocate to Ms. Nelson-Metzger, Ms. Newrath and Mr. Cress dated October 17, 2022 at 10:56 a.m.
- Email from Ms. Alford to the education advocate, Ms. Nelson-Metzger, and Ms. Bell dated October 17, 2022 at 12:57 p.m.
- Email from Ms. Nelson-Metzger to the education advocate, Ms. Alford, and Ms. Bell dated October 17, 2022 at 4:13 p.m.
- Email from the education advocate to Ms. Bell, and Ms. Alford dated October 19, 2022 at 4:47 p.m.
- Email from the education advocate to Gil Alvarez (Deputy Superintendent, USD 259) dated October 25, 2022 at 7:57 p.m.
- Email from Mr. Alvarez to the education advocate and Michele Ingenthron (Assistant Superintendent for Elementary Education USD 259) dated October 26, 2022 at 7:15 a.m.
- Email from the education advocate to Mr. Alvarez and Ms. Ingenthron dated October 26, 2022 at 7:48 a.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated October 27, 2022 at 1:59 p.m.
- Email from the education advocate to Ms. Hunter-Mitchell dated October 27, 2022 at 2:03 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated October 31, 2022 at 10:50 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated October 31, 2022 at 1:59 p.m.
- Email from Mr. Proctor to Ms. Bell and Ms. Strecker dated November 3, 2022 at 8:59 a.m.
- Email from Ms. Bell to Mr. Proctor and Ms. Strecker dated November 3, 2022 at 1:18 p.m.
- Email from Mr. Proctor to Ms. Bell and Ms. Strecker dated November 3, 2022 at 1:36 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated November 4, 2022 at 4:03 p.m.
- Email from the education advocate to Ms. Bell, Ms. Alford, and Ms. Hunter-Mitchell dated November 7, 2022 at 12:53 p.m.
- Email from Ms. Bell to the education advocate dated November 7, 2022 at 12:54 p.m.
- Email from the education advocate to Ms. Bell dated November 7, 2022 at 1:22 p.m.
- Email from the education advocate to Ms. Bell, Ms. Alford, and Ms. Hunter-Mitchell dated November 8, 2022 at 11:04 a.m.
- Email from Ms. Bell to the education advocate, Ms. Alford, and Ms. Hunter-Mitchell dated November 8, 2022 at 11:35 a.m. with attachment FastBridge Assessments [the student initials].

- Email from Ms. Bell to the education advocate, Ms. Alford, and Ms. Hunter-Mitchell dated November 8, 2022 at 12:00 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate, Ms. Alford and Ms. Bell dated December 7, 2022 at 10:00 a.m.
- Email from the education advocate to Rita Strecker (Licensed Permanency Specialist, St. Francis), Mr. Cress, and Matt Proctor (St. Francis Team) dated December 7, 2022 at 10:50 a.m.
- Email from Ms. Strecker to the education advocate dated December 8, 2022 at 5:01 p.m.
- Email from the education advocate to Ms. Bell, Ms. Bell, Ms. Alford, and Ms. Hunter-Mitchell dated December 8, 2022 at 5:21 p.m.
- Email from the education advocate to Ms. Bell, Ms. Bell, Ms. Alford, and Ms. Hunter-Mitchell dated December 8, 2022 at 5:22 p.m.
- Email from Ms. Bell to Mr. Proctor, Ms. Bolton, Ms. Alford, Ms. Hunter-Mitchell and Ms. Strecker dated December 12, 2022 at 10:36 a.m.
- Email from Ms. Strecker to the education advocate dated January 12, 2023 at 8:24 a.m.
- Email from the education advocate to Ms. Strecker dated January 12, 2023 at 8:34 a.m.
- Email from Ms. Strecker to the education advocate dated January 12, 2023 at 8:38 a.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated January 12, 2023 at 9:54 a.m.
- Email from the education advocate to Ms. Bell, Ms. Hunter-Mitchell and Ms. Alford dated January 12, 2023 at 6:24 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate, Ms. Bell and Ms. Alford dated January 13, 2023 at 8:43 a.m.
- Email from Ms. Hunter-Mitchell to the education advocate, Ms. Bell, Ms. Alford and Mitzi Jones Clark (Behavior Intervention Elem-LIC USD 259) dated January 18, 2023 at 3:55 p.m.
- Email from Ms. Bell to the education advocate and numerous others dated January 18, 2023 at 3:16 p.m.
- Email from Ms. Bell to the education advocate and numerous others dated January 19, 2023 at 8:05 a.m.
- Email from the education advocate to Ms. Bell dated January 19, 2023 at 8:36 a.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell and Ms. Alford dated January 23, 2023 at 2:38 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated January 23, 2023 at 3:29 p.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell and Ms. Alford dated January 23, 2023 at 4:10 p.m.
- Email from Ms. Bell to the education advocate dated January 24, 2023 at 9:22 a.m.

- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell, and Ms. Alford dated January 24, 2023 at 10:00 a.m.
- Email from Ms. Bell to the education advocate on January 24, 2023 at 10:26 a.m.
- Email from Ms. Jones to the education advocate, Ms. Bell, Ms. Hunter-Mitchell and Ms. Alford dated January 24, 2023 at 2:45 p.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated January 25, 2023 at 10:20 a.m.
- Notice of Meeting dated January 25, 2023 for Evaluation, Determine Eligibility and IEP Meeting on February 14, 2023
- Email from the education advocate to Ms. Bell, Ms. Hunter-Mitchell, Ms. Alford dated January 25, 2023 at 6:36 p.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell and Ms. Alford dated January 26, 2023 at 6:25 a.m.
- Email from Ms. Hunter-Mitchell to the education advocate dated January 26, 2023 at 6:34 a.m.
- Email from the education advocate to Ms. Hunter-Mitchell, Ms. Bell and Ms. Alford dated January 27, 2023 at 6:48 a.m.
- Email from the education advocate to Ms. Bell, Ms. Hunter-Mitchell, Ms. Alford, Mr. Proctor, Ms. Strecker, and Mr. Cress dated February 12, 2023 at 12:48 p.m.
- Email from Ms. Renollett to the education advocate dated February 13, 2023 at 10:45 a.m.
- Email from Ms. Alford to the education advocate, Ms. Bell, Ms. Hunter-Mitchell Mr. Proctor, Ms. Strecker, and Mr. Cress dated February 13, 2023 at 11:36 a.m.
- Email from Ms. Strecker to the education advocate, Ms. Alford, Ms. Bell, Ms. Hunter-Mitchell, Mr. Proctor, and Mr. Cress dated February 13, 2023 at 11:50 a.m.
- Email from Ms. Bell to the education advocate, Ms. Alford, Ms. Hunter-Mitchell, Mr. Proctor, Ms. Strecker, and Mr. Cress dated February 13, 2023 at 12:02 p.m.
- Email from Ms. Strecker to the education advocate, Ms. Alford, Ms. Bell, Ms. Hunter-Mitchell, Mr. Proctor, and Mr. Cress dated February 13, 2023 at 12:16 p.m.
- Email from Ms. Alford to the education advocate, Ms. Bell, Ms. Hunter-Mitchell Mr. Proctor, Ms. Strecker, Mr. Cress and Carisa Mallet (St. Francis Team) dated February 13, 2023 at 12:30 p.m.
- Email from the education advocate to Ms. Bell, Ms. Hunter-Mitchell, Ms. Alford, Ms. Strecker, Mr. Proctor and Mr. Cress dated February 13, 2023 at 12:41 p.m.
- Email from Ms. Hunter-Mitchell to the educational advocate, Ms. Bell, Ms. Alford and Wendy Dozier (Campus Support, USD 259) dated February 14, 2023 at 1:22 p.m.
- Email from the education advocate to Mr. Cress, Ms. Bell, Ms. Hunter-Mitchell, Ms. Alford, Mr. Proctor and Ms. Strecker, dated February 14, 2023 at 1:53 pm.

- Email from Ms. Hunter-Mitchell to the educational advocate, Ms. Bell, Ms. Alford, Ms. Nelson-Metzger and Ms. Dozier dated February 14, 2023 at 4:39 p.m.
- Email from Ms. Hunter-Mitchell to the educational advocate, Ms. Bell, Ms. Alford, Ms. Nelson-Metzger and Ms. Dozier dated February 21, 2023 at 12:44 p.m.
- Email from the education advocate to Ms. Alford, Ms. Bell, Ms. Hunter-Jackson, Dr. Vince Evans (Assistant Superintendent, Student Support Services, USD 259) dated March 6, 2023 at 7:39 p.m.
- Email from Ms. Bell to the education advocate, Ms. Alford, Dr. Evans, Ms. Hunter-Mitchell, Ms. Jones, Ms. Dozier and numerous others dated March 7, 2023 at 3:19 p.m.

Background Information

This investigation involves a nine-year-old student who is enrolled in third grade at Clark Elementary in USD #259. He receives special education and related services as a child with emotional disturbance and other health impairment per the Individuals with Disabilities Education Act (IDEA). The student was first placed in foster care at age 3. Parental rights have been severed. He has been in his current foster placement since 2021, with an additional placement in Pathways Psychiatric Residential Treatment Facility for 8 months. According to his Child and Family Profile (June 11, 2021), the student has been diagnosed with the following mental health diagnoses: Attention Deficit Hyperactivity Disorder (ADHD) Combined Type, Post Traumatic Stress Disorder (PTSD), Adjustment Disorder with Mixed Anxiety and Depressed Mood, Borderline Intellectual Functioning, Specific Learning Disorder with Impairment in Math, and Oppositional Defiant Disorder. According to his recent evaluation for initial eligibility, additional recent psychological testing was reviewed by the district and list the following mental health diagnoses: Disruptive Mood Dysregulation Disorder, Personal History of Physical Abuse in Childhood, Personal History of Sexual Abuse in Childhood, Personal History of Neglect in Childhood, (provisional) Auditory Processing Disorder, ADHD, and PTSD.

The child was assigned an education advocate by Families Together in August, 2022, and his first educational evaluation took place during the 2022-23 school year. Because of his problematic behavior at school, a behavior intervention plan was included in his initial placement IEP dated February 14, 2023. Educationally, the student struggles to attend to academic instruction and fails to follow directions and routines at school. He is behind in the third grade curriculum, experiencing significant delays in reading, writing and math. His educational evaluation states that he is extremely below or well below average in crystallized intelligence, fluid reasoning, short term memory, and long term retrieval.

ISSUE ONE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

Positions of the Parties

The complainant alleged that the district failed to meet its obligation to evaluate the child expeditiously, given his evident need due to repeated suspensions at the beginning of the school year. The complainant stated that on or before September 14, 2022, she alerted the district that as his education advocate she intended to request an special education evaluation. She questioned whether the district unduly delayed the student's evaluation during an MTTS process. She further stated that she formally requested an evaluation on October 2, 2022, that she received the Prior Written Notice for Evaluation and request for consent on October 31, 2022, and the review of the evaluation, eligibility, and initial IEP meeting was held on February 14, 2023.

The district refuted this allegation, stating: "It is the position of USD #259 that the comprehensive initial special education evaluation was completed in less than 60 school days, which meets the required timelines of the state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA). . . The 60-school-day timeline for when the evaluation must be completed begins when the agency receives written parent consent to conduct the initial evaluation (K.A.R. 91-40-8(f)). The Educational Advocate asked for an initial evaluation twice, rescinding her first, 9-13-22 request the day after that request, on 9-14-22. The Educational Advocate submitted a new request for an initial evaluation on 10-2-22, and the district responded via email to the Educational Advocate on 10-24-22 (the 15th school day from the request date) that the school intended on proceeding with the evaluation, which was followed by a PWNE to obtain her consent. The student was in the MTSS process concurrently with the evaluation, which included an FBA, which was communicated to the Educational Advocate, and the MTSS process did not delay the evaluation. The Educational Advocate signed consent for the second evaluation request on 10-31-22, and the evaluation was completed on 2-14-23, which amounted to 59 school days. Emails show communication throughout the evaluation process between the school and the Educational Advocate, and between the timeframes during which the Educational Advocate states she received no communication from the school."

Additionally, in their response to Issue 6, the district states that an expedited evaluation was precluded due a number of reasons, including: (a) attempts to acquire outside evaluation reports from the educational advocate (b) conducting the FBA requested by the education advocate, (c) the student's frequent "heightened emotional state" that precluded formal testing for the evaluation (d) the student forgetting his glasses, and (e) the number of student absences, truancies, and suspensions.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the educational advocate (EA), foster parent and staff in USD #259.

The complainant and the district agreed that the complainant initiated a request for a special education evaluation on September 13, 2022 and rescinded that request on September 14, 2023.

The complainant and the district agreed that the formal request to the district for the evaluation occurred on October 2, 2022; that the district generated a Prior Written Notice - Evaluation and the education advocate (EA) signed it on October 31, 2022, and that the meeting to establish the student's eligibility and develop the initial IEP occurred on February 14, 2023.

The complainant and the district agreed that the district generated a Prior Written Notice to initiate the IEP services on February 14, 2023 and that the education advocate signed it on February 23, 2023.

Neither the complainant nor the district reported that an extension to this timeline was requested. The complainant did not allege that the evaluation was not comprehensive.

Applicable Regulations and Conclusions

The Kansas Special Education Process Handbook states: "Kansas has established a 60 school-day timeline consistent with federal regulations (K.A.R. 91-40-8(f); 34 C.F.R. 300.301(c)). The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services" (p.41). K.A.R.91-40-8(f) states that within 60 days of the date the agency receives written parental consent for the evaluation, the district must (1) conduct the evaluation, (2) determine eligibility and conduct an IEP meeting if the child is eligible, and (3) implement the child's IEP.

Because this student also had many short term suspensions, as discussed in Issue 6, guidance on suspensions and expulsions of children not yet eligible is useful with regard to an expedited timeline. The Kansas Special Education Process Handbook states, "If the child's parents request an evaluation of the child during the period of suspension or expulsion or other disciplinary action, the evaluation must be conducted in an expedited manner. No timeline is specified with regard to an expedited evaluation. However, in this context, the term 'expedited' suggests the evaluation should be concluded in a shorter time frame than a normal evaluation" (p. 203).

In this case, the formal request was made on October 2, 2022 and the consent for evaluation was signed on October 31, 2022 beginning the 60 day timeline. It is noted that the elapsed time between the education advocate's formal request for a special education evaluation and the district's request for her consent through Prior Written Notices is 20 school days. The IEP meeting was held on February 14, 2023 on day 59 of the timeline. The district provided a PWN to initiate services on February 14, 2023, which was signed by the education advocate giving consent on February 23, 2023. The 60 days was therefore exceeded by the additional time required to obtain the permission to initiate services ending the timeline on day 64. In addition, the district did not conduct an expedited evaluation.

It is therefore found that USD # 259, in violation of K.A.R.91-40-8, failed to complete a comprehensive special education evaluation for a child with a suspected disability within timelines.

> ISSUE TWO: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a Notice of Meeting that met state and federal requirements, specifically by naming persons from outside agencies who were invited by the district

Positions of the Parties

The complainant alleged that the January 25, 2023 Notice of Meeting that she received for a meeting on February 14, 2023 did not include a representative from ComCare, a community mental health service provider, and that this person was in attendance at the student's eligibility and IEP development meeting on February 14, 2023.

The district responded: "It is the position of USD #259 that a Notice of Meeting was provided to the Educational Advocate on 1-25-23 that met all state and federal

requirements, except that it did not include the student's ComCare caseworker on the Notice. The District acknowledges that consent from the Educational Advocate was not obtained prior to the ComCare caseworker attending the meeting, but that this procedural error did not deny the student of his FAPE. . ."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the education advocate and staff in USD #259.

The findings of Issue One are incorporated herein by reference.

The district and education advocate agree that a Notice of Meeting dated January 25, 2023 for a meeting on February 14, 2023 was emailed to the education advocate.

The district and education advocate agree that a copy of the parent rights was included with this Notice of Meeting.

The district and the parent agree that the representative from ComCare was not listed on the Notice of Meeting.

The district and the education advocate agree that a representative from ComCare attended the student's eligibility and IEP development meeting on February 14, 2023.

The district acknowledges the error that the representative from ComCare should have been listed on the Notice of Meeting.

Applicable Regulations and Conclusions

According to K.A.R. 91-40-17(a)(2), a Notice of Meeting must be provided in writing at least 10 days prior to the meeting and inform the parents that their child is invited to attend the meeting. The written notice must indicate the following: (a) the purpose, (b) date, (c) time; (d) location of the meeting, (e) the titles or positions of the persons who will attend on behalf of the school and (f) the parents have a right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child.

In this case, the district provided adequate notice for the eligibility and initial IEP meeting, which met the conditions required except (f) to include all the individuals who would attend the meeting on behalf of the school. It is noted that the school personnel

acted with good intent when extemporaneously inviting a person from an outside mental health agency who was in the school who was working with the student at the time the IEP meeting was being held. It is also noted that the district acknowledged this error and offered to provide additional instruction of their staff on this topic.

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district failed to provide a Notice of Meeting that meets state requirements, specifically by naming persons from outside agencies who were invited by the district.

> ISSUE THREE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to afford the education advocate or parent an opportunity to participate in eligibility and IEP planning meetings

Positions of the Parties

The complainant alleges that she provided her letter of appointment as the student's educational advocate to the school on August 29, 2022, and that she had repeated difficulty obtaining contact information for school staff directly involved in the student's educational program. The complainant alleged that her participation in the IEP meeting was discouraged due to the district first failing to provide a working link to the virtual Microsoft Teams platform for the meeting and secondly by stating that she was to hold her questions to the end of the meeting. This precluded her from actively participating in the evaluation, eligibility and IEP development meeting on February 14, 2023. She further alleges that her statement of "parent concerns" concerns was not placed within the IEP document but was reportedly included in the student's file.

The district replied: "It is the position of USD #259 that, pursuant to state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), the Educational Advocate did have the opportunity to participate, and participated, in the eligibility and IEP meetings." The district further claims that (a) on September 30, 2022, the district invited the EA to participate in a meeting to discuss the child's needs in concert with regularly scheduled parent teacher conferences (b) the district invited and the EA participated in a meeting to discuss classroom interventions on October 31, 2022, (c) the EA received Notice of Meeting for the February 14, 2023, eligibility and IEP meeting, (d) that there were email interactions between the district and the EA to obtain information for the evaluation, and (d) the EA was sent a Microsoft Teams link to

participate in the February 14, 2023 meeting which was unable to be delivered to the EA's email address, and (e) that the EA was connected by phone to the meeting when introductions began. The district claims that records "show that the Educational Advocate meaningfully participated, was listened and responded to, as is evidenced by her input being included in the student's IEP folder as well as staff training she requested being added."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the educational advocate, foster parent, and staff in USD #259.

The findings of Issues One and Two are incorporated herein by reference.

During the 2022-23 school year, the school used five ways to communicate with the education advocate: electronic platform postings (ParentVUE), email, class DOJO, Microsoft TEAMS, and phone participation in meetings. The district reports that attendance and grade reports are included in ParentVUE.

The education advocate claimed and email documentation supported that she presented the letter of appointment as education advocate to the school on August 29, 2022. The email and attached letter were received by the school clerk who added her to the students enrollment record.

The district reported, and emails showed that the district initiated a meeting with the education advocate and foster agency staff to discuss the student's behavior and needs on September 30, 2022.

The education advocate and district agreed that the education advocate participated by Microsoft TEAMS in a meeting to discuss possible interventions for the student on October 31, 2022.

The education advocate and district agreed that the education advocate requested classroom performance data on November 7, 2022, and she received FastBridge scores in response to her request.

The education advocate and the district agreed that an "impromptu" meeting was held on January 18, 2023 between school and foster care staff, due to a behavioral incident at the school. The district claimed that it occurred the day of the meeting and involved the

foster agency staff who were at the school; those persons then connected their supervisors to the conference using their phones. The district reported that they attempted to call the education advocate at the time of the meeting and received no answer. The education advocate reported that she received a call but could not answer the phone at that time. The education advocate and the district agreed that conference notes were sent by the district to the education advocate, the foster parent, and all the attendees at the meeting on the same day as the meeting, January 18, 2023.

The education advocate and the district agreed, and emails showed that the eligibility and initial IEP meeting was scheduled on February 14, 2022 to allow the education advocate to attend the meeting and that she would participate by phone or TEAMS. Foster care agency staff also attended this meeting.

The education advocate and the district agreed that a communication breakdown led to the education advocate's participation by telephone in the February 14, 2022 eligibility and IEP meeting. This breakdown included a Microsoft TEAMS link sent by the district but not received by the education advocate due to server rejection, the last minute request by the education advocate for the link that at the time of the meeting did not work, and the phone call that resulted in her connection into the meeting.

The education advocate and the district agreed that the education advocate was connected by telephone to the evaluation, eligibility and initial IEP development meeting on February 14, 2023, and the signature page on the IEP documents her participation by phone.

The education advocate reported she was not able to ask questions during the evaluation, eligibility and initial IEP development meeting on February 14, 2023, being asked to hold her questions to the end of the meeting. The school psychologist reported that the education advocate was allowed to ask questions and comment on the evaluation, student eligibility, and IEP content. The IEP Meeting notes stated that the education advocate disagreed with one element of the definition during the eligibility discussion, asked a question of Ms. Bell during the evaluation report, and initiated a discussion of working on a computer during the development of the IEP. The education advocate also stated her concerns at this time, which included the time taken to complete the evaluation, requesting trauma training for the foster parent and for staff working with the student, dyslexia screening for the student, and Cognitive Behavioral Therapy (CBT) for the student, as recorded in the IEP Meeting Notes. It is therefore found that the education advocate participated in the evaluation and eligibility

discussion and in the development of the student's IEP during the meeting on February 14, 2022.

The education advocate and the district agreed that there was an email exchange in which the educational advocate's concerns were enumerated. The district received these requests and provided Prior Written Notice on March 7, 2023 to accept (training for staff and foster parent) and refuse (CBT) the education advocate's requests. The district reported that the education advocate's concerns were attached to the student's file. The February 14, 2022 IEP, in the space provided for parent concerns says, "Parent/Guardian concerns regarding the students academic/behavioral performance is attached to students file."

Applicable Regulations and Conclusions

According to the Kansas Special Education Process Handbook (p.2), "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. . . (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b),(c))" (p.1).

Parents also have the opportunity to examine records and to participate in meetings with respect to their children's identification, evaluation, educational placement, and the provision of FAPE to their child (K.A.R.91-40-25). Meetings should be scheduled at mutually agreeable times and use methods such as video or phone conferencing if parents cannot attend in person (K.A.R. 91-40-17 (a), (c)). Parents are to be provided Notice of Meetings at least 10 calendar days prior to the initial IEP meeting and any subsequent IEP meetings (K.A.R. 91-40-17(a)(2)). In addition, parents receive Prior Written Notice when a school proposes to initiate or change the identification, evaluation, educational placement of their child, or provision of special education and related services (FAPE) to their child, and when a school district refuses a parental request on the same (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)).

In this case, the district scheduled a meeting to discuss the student's school performance on October 28 with the education advocate, teacher, foster parent, and foster care agency staff to discuss the student's classroom performance assessment

scores and MTSS interventions and to solicit input from the participants on solutions for the student's extensive behavior problems.

Also, the district scheduled the IEP meeting at a time agreed upon by the education advocate, foster parent, and others involved with the child through the foster care agency. The district provided adequate Notice of Meeting as required. During that February 14, 2022 meeting, when the evaluation, eligibility and IEP development were discussed, the education advocate and others were given the opportunity to ask questions, make requests, and to add points of discussion for the IEP team. The education advocate expressed concerns, later provided in writing, that she wished the district to include on the IEP and which were referenced in that document as an attachment to the student's file. Within the concerns statement, the education advocate made specific requests for services and training, to which the district responded with Prior Written Notice, as required.

In addition, extensive email conversations between district staff and the educational advocate, at times involving the foster care agency staff, indicate that the education advocate and the district were in frequent conversation about the child's assessments, records, classroom performance, behavior problems, and their meetings to discuss the student's needs. It is noted that the multiple formats and various people involved in this communication resulted in a complex communication scenario that was at times unsatisfying to the parties involved. Yet, it resulted in the district's provision of educational records to the education advocate, the district's completion of the student's special education evaluation, educational advocate participation in the eligibility and initial IEP meeting, and an initial IEP that included changes in the student's academic program and schedule to address the child's behavioral needs and academic delays.

Based on the foregoing, according to IDEA and Kansas special education regulations it is *not* substantiated that the district failed to afford the education advocate or parent an opportunity to participate in eligibility and IEP planning meetings.

> ISSUE FOUR: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the education advocate access to classroom performance information and teacher communication during the 2022-2023 school year.

Positions of the Parties

The complainant alleged that the district did not provide her access to interactions with the student's classroom teacher so that she could be an informed member of the student's educational team. The complainant stated that she contacted the teacher in September for a parent teacher conference and that the teacher did not call her on the appointed date and time on October 12, 2022. She reported that she contacted the principal, who said the teacher would reach out to her, and the school psychologist, who said on October 24, 2022 that the teacher was not required to call the education advocate as she was going to be present at the upcoming meeting on October 31, 2022.

The district responds that communication with the classroom teacher occurred through DOJO (a teacher communication app) with regard to setting up a parent teacher conference with the education advocate and with the foster parent. The following are claims in the district response: (a) The teacher acknowledged that she misunderstood that the two parties were not going to be present during the same parent teacher conference time, as they were scheduled at the same time (the EA expecting to participate by phone or TEAMS). (b) The teacher initiated communication about the missed meeting through class DOJO. (c) The Education Advocate was in communication with the school psychologist at this point. (d) The principal attempted to connect the teacher and the education advocate through email and she offered to set up another time for a parent teacher conference. (e) The teacher apologized and offered to set up another time to meet using class DOJO.

The district stated: "The Education Advocate's supervisor sent her an email, asking her to meet with the school team about the student and eventually a meeting was scheduled for 10-31-2022. The Educational Advocate was told that the Teacher would be at that meeting and should discuss her concerns with the Teacher at that time. The Educational Advocate attended the 10-31-22 meeting, and the school provided the Educational Advocate with the student's FastBridge scores, information regarding his behaviors in the classroom setting as well as his MTSS information regarding his Tier 3 intervention group and SAEBRS information for the 2022-2023 school year that was discussed during the meeting; this information was repeated and included in his MTR report and discussed during his eligibility meeting." The district also listed the following dates of communication initiated by the teacher through class DOJO: November 5, 2022, November 8, 2022, and February 2, 2022, and summarized: "These examples document that the school provided the Educational Advocate access to the student's classroom

performance information and Teacher communication during the 2022-2023 school year."

Findings

The findings of Issues One, Two and Three are incorporated herein by reference.

The education advocate and the district agreed that she did not participate in the parent teacher conference that she had scheduled on October 12, 2022 because the teacher did not telephone her at the scheduled time.

The district reported that the teacher assumed that the education advocate would be present (in person) at the same conference as the foster father and did not call or answer the education advocate's DOJO message on that date.

The district reported, and emails and DOJO messages from October 17-October 26, 2022 showed that district staff attempted to repair the communication and to reschedule the parent teacher conference with the education advocate. A meeting to discuss the student's academic performance, behavior problems, consent for evaluation, and effects of his disability in the classroom was held on October 31, 2022. The education advocate and the teacher attended this meeting, along with the school psychologist and foster care agency staff. Following the meeting in an attachment (entitled *FastBridge Assessments [the student initials]*) to an email dated November 8, 2022, the district provided details of the student's classroom performance including the MTSS interventions being provided at that time.

The district and the foster father agreed that frequent communication on the student's daily classroom behavior and performance occurred between the foster father and the school staff, often at latchkey before and after school or by telephone during the day, as needed. The foster father and the education advocate agreed that they are not in regular communication with each other but instead each communicates with the foster care agency staff.

Applicable Regulations and Conclusions

According to the Kansas Special Education Process Handbook, "An education advocate (referred to as "surrogate parents" in Federal law) is appointed to act on behalf of the child when parents are unknown, unavailable, or parental rights have been severed. The state special education statutes and regulations give the Kansas State Board of

Education (KSBE) the authority to appoint education advocates to act on behalf of the child, if parents are unknown, unavailable, or parental rights have been severed or relinquished."

The education advocate acts as the parent, exercising parental rights with regard to educational decision making, to include those identified in K.S.A. 72-3430 and 34 C.F.R. 300.504(c) and published in a document entitled: *Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards)*. These include the opportunity to participate in meetings and examine records, appropriate notice of meetings, prior written notice of special education actions by the district, right to give consent as identified in K.A.R. 91-40-27, information on the procedural safeguards and dispute procedures. In general, the education advocate has the right to inspect and review documents and participate in meetings concerning the issues at the heart of special education: identification, evaluation, placement and provision of FAPE to the child (K.A.R. 91-40-25).

In this case, the education advocate's concern is that she did not have regular contact with the student's classroom teacher. When the October 12, 2022 parent teacher conference was missed due to misunderstanding, intervention by the principal to reschedule it was unsuccessful. During the same period of time, beginning September 30, 2022, the school psychologist was attempting to schedule a meeting to discuss the student's needs that were becoming evident through the MTTS process and disciplinary actions. On October 17 by email, the principal advised the education advocate to reply to initiations by the school psychologist and that she would check on the parent teacher conference mishap. A meeting to review classroom data and MTSS Tier 3 classroom support was scheduled and held on October 31, 2022, the same day as the consent for evaluation was obtained from the education advocate. Meanwhile, the custodial foster parent was in regular contact with the district and situated to receive routine updates on the student's class experience each day. The education advocate was reliant upon ParentVUE, class DOJO messages, emails, and virtual or phone participation in meetings to communicate with the district about the student's needs. The education advocate asked for and received classroom assessment data and information on Tier 3 support in the classroom. ParentVUE provided grade and absence reports.

Based on the foregoing, according to IDEA and Kansas special education regulations, it is *not* substantiated that the USD #259 failed to provide the education advocate access to classroom performance information and teacher communication during the 2022-2023 school year.

ISSUE FIVE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a dyslexia screening in accordance with KSDE guidance.

Positions of the Parties

The complainant alleged that the district verbally denied her request on February 14, 2023 for a dyslexia screening or for a copy of that screening if it had already been done. The complainant alleged that the district provided a later Prior Written Notice that included "FastBridge screens for dyslexia."

The district replied: "It is the position of USD #259 that the district was not in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) with regard to conducting a dyslexia screening in accordance with KSDE guidance. The district is required to determine special education eligibility through a comprehensive evaluation per IDEA Sec. 300.309 and K.A.R. 91-40-11. Dyslexia falls under the exceptionality category of Specific Learning Disability. . . A Dyslexia screening is not a general requirement for every evaluation. However, the district did do a screening by means of FastBridge, an approved Dyslexia Screener per the Kansas State Department of Education, as part of the entire process toward determining special education eligibility. As part of the comprehensive initial evaluation, psychoeducational testing completed by the school Psychologist included assessments to assist the team in determining whether or not the student had a specific learning disability, whether or not that be due to dyslexia. An 11-8-22 email shows that the school provided the student's FastBridge scores to the Educational Advocate after a team meeting she attended on 10-31-22 regarding the student's behaviors in the classroom. The Educational Advocate was also provided with his MTSS information regarding his Tier 3 intervention groups and SAEBRS information. The FastBridge information also was repeated and included in his current MTR report and discussed during his eligibility meeting, where the Educational Advocate requested dyslexia screening for the student."

Findings

The findings of Issues One, Two, Three and Four are incorporated herein by reference.

The education advocate and the district agreed that dyslexia screening or the results of the dyslexia screening were requested by the education advocate on February 14, 2023.

KSDE policy on dyslexia lists assessments that meet the policy's requirements, including the FastBridge Reading Screening. The district's Assessment Schedule (2022-2023) showed that the FastBridge Reading Screening is used for dyslexia screening and MTTS accreditation requirements as per KSDE policy.

On November 8, 2022 the district provided the FastBridge scores to the education advocate in an email attachment called *FastBridge Assessments for [the student initials]*. These scores were also included as part of the special education evaluation report discussed at the evaluation, eligibility and initial IEP meeting for the student on February 14, 2022. The district and the education advocate agreed that, at the February 14, 2022 meeting, the education advocate requested a dyslexia screening or the scores if one had been completed. The district did not explain that the FastBridge served as the dyslexia screening at that time. The district provided a Prior Written Notice dated March 7, 2022 that noted that the FastBridge served as the dyslexia screening and that the scores had been provided.

The Multidisciplinary Team Report on the student's evaluation for special education stated that he was assessed for the disability Specific Learning Disability and he did not meet the criteria for services under that eligibility indicator.

Applicable Regulations and Conclusions

The Dyslexia Handbook (KSDE, 2022) states: "All accredited schools in Kansas are required to administer screening for dyslexia to all students in grades kindergarten through 12th grade. The screener should be administered at least three times per year and aligned with national normed benchmark outcomes" (p. 16). It is important to note that the screening is intended for universal prevention of reading difficulties; a screening flowchart on page 14 of the manual shows how the dyslexia screening should lead to a student centered problems solving process that leads to additionally intensive preventive or remedial educational interventions. Dyslexia is also mentioned in IDEA's definition of Specific Learning Disabilities as a condition included within the category (Sec. 300.8 (c) (10). When a student is evaluated for special education eligibility, the evaluation should result in information that allows the evaluation and IEP teams to determine the IDEA disability under which they are eligible as well as how to develop an initial IEP that meets their educational and developmental needs.

In this case, the student was screened in accordance with USD # 259 policy with a screening tool that met KSDE requirements on dyslexia. Those results were shared with the educational advocate, with some lack of clarity upon the part of the school district

about the dyslexia policy. It is noted that the district staff could have better informed the education advocate about how the dyslexia screening requirement was specifically met in their district during the student's evaluation or at the February 14, 2022 eligibility and initial IEP meeting when the education advocate made her request. Nonetheless, the student did receive appropriate screening under this policy and the results were shared with the education advocate, included in his multidisciplinary evaluation, and provided to the evaluation team to discuss during the student's eligibility determination.

Based on the foregoing, according to IDEA and Kansas special education regulations it is *not* substantiated that the district failed to conduct a dyslexia screening in accordance with KSDE guidance.

> ISSUE SIX: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE during suspensions and removal from school for a child having or suspected of having a disability.

Positions of the Parties

The complainant alleged that the district allowed the student to be repeatedly suspended before and during the period during which the student was being evaluated as a child suspected of having a disability. The complainant further alleged that the child was removed from instruction during additional in-school suspensions and that the foster parent was frequently called to school for conferencing, after which the child was sent home early from school. The complainant alleged that the district failed to properly account for the number of days the child was suspended or otherwise removed from school due to the disciplinary actions of the school.

The district responded: "It is the position of USD #259 that the school did not fail to provide the student his FAPE during suspensions and removal from school. The district believes we could be deemed to have been under the basis of knowledge for this student not-yet-eligible for special education on 9-13-22."

The district stated that the number of absences, truancies, and suspensions hindered their ability to carry out an expedited evaluation. The district claimed that FAPE was provided to the student because (a) the student was suspended out of school for a total of nine days from the beginning of school to the February 14, 2023 eligibility meeting, (b) the school used a variety of discipline dispositions, not only suspensions, (c) "the school

actively engaged in behavioral interventions to enable the student to remain in school at his current building, where staff knew the student and could continue the evaluation process in a timely manner", (d) "[d]uring in-school-suspensions, the student received assistance with the work provided by his classroom Teacher (e.g., reading, language arts, and math)," worked at his own pace, was given breaks, and assisted by a licensed teacher and behavior support staff.

Further, the district claimed: "As part of the FBA process, staff tried different behavioral interventions to test their hypotheses. Some days the foster parent took the student home before the end of the day of his own accord (and the student was provided with homework to complete at home to ensure that his learning could continue); the school only asked the foster parent to take the student home during the school day when the student was being given out-of-school suspension. . .. During all of this time, the evaluation continued, as did the FBA component of the evaluation, and the student continued to receive different interventions along the way, such as the first-then intervention, preferred activities, etc. to meet his presenting needs. . . The Principal has assured that even before they completed the student's initial evaluation, they made sure that they met the student's presenting needs at the time prior to 2-14-23 -- they did not leave the student floundering without behavioral support, but supported his presenting needs."

Findings

The findings of Issues One, Two, Three, Four and Five are incorporated herein by reference.

Foster care records and interviews document that the student was placed in his current foster home from September 20, 2021 - October 8, 2021 and attended second grade at Clark Elementary during that period before being hospitalized due to his history of mental health needs prior to that placement.

During the current 2022-23 school year, the school and the foster parent agree and discipline records supported that the foster parent as custodial parent received discipline (conference, in or out of school suspension) paperwork as required by district BOE policies 1464 and 5113 when he picked up the student from school or during conferences with school personnel.

The district reported that it is the policy to provide disciplinary action forms to an education advocate if one is appointed. It is the school's practice to email them to the

education advocate in this case. Attendance records but not disciplinary action forms are available through the electronic platform ParentVUE.

The education advocate claimed and the emails supported that she received the following disciplinary paperwork for the student: Disciplinary Action Forms dated November 2, November 3 and November 4, 2022; January 19 and January 24, 2023; Daily Attendance Profile for the period August 17, 2022-February 3, 2023, with entries for in or out of school suspensions on September 22, September 26, September 27, October 27, October 28, November 10, December 7, December 14, and December 15, 2022.

The district claimed and school discipline documents supported that the student was suspended for a total of nine days, occurring on the following dates: September 22, September 26, September 27, October 25, October 27, October 28, November 10 and December 7, 2022; and January 19, 2023.

The district claimed an input error showed a suspension at 3:30 pm on October 6, 2022, when the student left school early.

The student received in school suspension on 14 days on the following dates in the 2022-2023 school year: September 9 (½ day), September 30 (½ day), October 12 (½ day), October 13 (½ day), November 3 (1 day), November 14 (½ day), November 18 (½ day), December 5 (½ day), December 14 (1 day), December 15 (1 day), January 11 (½ day), January 12 (1 day), January 24 (½ day), February 23 (½ day).

The district reported that ISS expectations are that the student will complete classwork provided by the teacher and that ISS is conducted in the Behavior Support Classroom which is staffed by a licensed teacher and assisted by the elementary behavior specialist. The district reported that the student's classwork was provided by his teacher and he was supervised by a licensed teacher during ISS periods.

School discipline records showed that the foster parent was contacted by phone 18 times or participated in 12 conferences with the school for a total of 30 contacts between September 14, 2022 and March 2, 2023. An interview with the foster parent confirmed that there were many contacts from the school that at times drew him away from work, but he could not confirm the dates or number of times when this occurred.

On three dates, records indicated that the student left school early. On September 23, 2022, according to interviews and discipline records, the student was engaging in self

harm, could not be calmed by school staff, and was sent home with the foster parent. On October 6, 2022 according to interviews with school staff, sign out sheets, and discipline records, the student's self harm and suicidal statements led to a suicide protocol and the student was transported from school for medical care. On January 18, 2023 according to emails, sign out sheet, conference notes, and interviews, the student engaged in self harm and was transported from school for medical care.

The district reported that the school's MTSS was in use to provide student support from the beginning of the school year. The district reported that the student was first considered by the Child Study Team on August 29, 2022; behavior monitoring in the classroom was initiated. The district reported that the student was receiving Tier 3 support by October 31, 2022 at which time this was reported to the education advocate and discussed at a meeting. A follow up mail from the education advocate to the district on November 9, 2022 requested clarification on the students Tier 3 supports and academic data shared at the October 28, 2022 meeting. The student's IEP reviewed Tier 3 interventions as part of the existing data.

The district reported and documents supported that an FBA for the student was conducted during the evaluation. Documents showed that baseline observations for the BIP occurred between October 31 and November 14, 2022 during which behavior intervention strategies were tested with the student.

Applicable Regulations and Conclusions

K.S.A. 72-3436(b) states: "A school district shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred: (1) The parent of the child has expressed concern, in writing, to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child, that the child is in need of special education and related services; (2) the parent of the child previously has requested an evaluation of the child; or (3) the teacher of the child, or other personnel of the school district, previously has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of such school district or to other supervisory personnel of the district."

The Kansas Special Education Process Handbook (KSDE) also advises that, because IDEA's discipline provisions extend to a child undergoing an evaluation, "it is very important that screening records be maintained . . . in the student's cumulative folder. Such data will provide documentation that if there was a suspected disability at some

time in the past, the school made the determination whether or not the child should be referred for an initial evaluation to determine eligibility. Therefore, it is important for schools to maintain records on children as such data could be important should a disciplinary proceeding occur later" (p.206).

In this case, the district was alerted to the student's potential for being a child with a disability prior to the initiation of the special education evaluation on October 31, 2022 and its conclusion on February 14, 2023. The district had very brief contact with the student during his second grade year, as he did not stay in the foster care placement long. During the 2022-2023 school year, the district first learned that an education advocate was appointed when the education advocate provided her appointment letter on August 29, 2022. The education advocate requested an evaluation on September 13, 2022 but rescinded this request on September 14, 2022, indicating her intention to make the request at a later date and her need to get paperwork required for the school "to get a picture of [the student]." Therefore, it is found that the requirement for district's knowledge that the child is a child with a disability as required by K.S.A.72-3436 (b) was met on or before September 13, 2022.

In keeping with this understanding, the district has the right to use its regular disciplinary policies, including short term suspension for up to 10 days. In this case, the district suspended the student for a total of nine days and the district used in school suspension on 14 occasions, for half or whole days, when the student was supervised in doing his school work by a teacher with behavior support staff as needed. Additional student and parent conferencing were also used to address the student's behavior problems.

Many conferences and calls to the foster parent were found, and the allegation that the foster parent was being required to pick up the child early without proper disciplinary documentation was unable to be substantiated in the complaint investigation. The student's behavior problems include the co-occurrence of self harming actions and statements with other behaviors more regularly conceptualized as disciplinary in nature (e.g., hitting others, stealing, disruptiveness). The school's notes and interviews state that, at times, the foster parent was called to calm or talk with the student during the day. At least three times, the student was removed by the foster parent, foster care or mental health agency staff due to events characterized as self harming or suicidal. These are not suspensions or school removals due to disciplinary actions on the part of the school and are therefore not included in the number of suspensions accrued after September 13, 2022 during the 2022-23 school year.

Based on the foregoing, according to IDEA and Kansas special education regulations it is *not* substantiated that the USD #259 failed to provide FAPE during suspensions and removal from school for a child having or suspected of having a disability.

Corrective 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) that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f).
2. By May 30, 2023, USD #259 will submit a plan showing how school psychologists, school building administrators and relevant staff will be provided training on responding to a request for evaluation in 15 days, reviewing student discipline records to determine if an expedited evaluation is required, and completing the evaluation in 60 days with the initiation of special education services for students found eligible. Within 30 days following the training, USD #259 will submit the training agenda and list of attendees to SETS.
3. 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) that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at K.A.R. 91-40-17(a)(2)
4. By May 30, 2023, USD #259 shall review Notice of Meeting requirements with district staff responsible and provide guidance on procedures to assure parent rights and student confidentiality if an error on the Notice of Meeting occurs.
5. 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) that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act at K.A.R.91-40-25 and K.S.A. 72-3436(b)

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.

Gwen P. Beegle, Ph.D.

Gwen P. Beegle, Complaint Investigator

Donna Wickham, Ph.D.

Donna Wickham, 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 #430
ON MARCH 23, 2023

DATE OF REPORT APRIL 21, 2023

This report is in response to a complaint filed with our office on behalf of the student by the student. In the remainder of the report, the student will be referred to as "the student." The student is the student's mother and in the remainder of this report will be referred to as "the mother" or "the parent.

The complaint is against USD #430 (South Brown County Public Schools) who provides general and special education and related services to students in their district. In the remainder of the report, "school" or the "district" shall refer to the 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 March 23, 2023 and the 30-day timeline ends on April 21, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator initially interviewed the mother by telephone on March 24, 2023. Additionally, the Complaint Investigator exchanged emails, texts, and phone calls and messages with the mother between March 24 - April 13, 2023.

USD #430 made the following school staff available for a conference call interview with the Complaint Investigators on April 3, 2023: Ms. Becky Shamburg, director of special education, David Losey, 5th/6th special education teacher, Ronda Torkleson, 5th grade math teacher, Kyli Brenner, 5th grade social studies and science teacher. The complaint investigator later spoke with Linda Barnhill, Language Arts teacher on April 11, 2023 and the superintendent, Jason Cline on April 11, 2023.

The Complaint Investigator exchanged emails with Ms. Shamburg between March 24, 2023 through April 5, 2023 to gather additional information and to clarify documentation provided by the district.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials submitted were carefully read and used in consideration of the issue. They include:

- Evaluation/Reevaluation Eligibility Report dated December 4, 2020
- Individualized Education Plan dated December 3, 2021
- Email chain between parent and Mr. David Losey, special education teacher dated August 23, 2022 between 9:56 p.m. and 10:46 p.m.
- Email exchange between parent and Mr. Losey dated September 12, 2022 at 12:46 p.m. and 12:56 p.m.
- Individualized Education Plan and Team Meeting Record, IEP-At-A-Glance, dated December 2, 2022
- Prior Written Notice for Identification, special education and related services, educational placement, change in services, change in placement, and/or request for consent, dated December 2, 2022
- Email exchange between parent and Mrs. Smith dated December 12, 2022 between 8:52 p.m. and 9:29 p.m.
- Email from parent to Ms. Shamburg Mr. Losey, Mr. Jason Cline, Superintendent, and families together dated February 7, 2023 at 8:52 p.m.
- Email from Ms. Becky Shamburg, Director of Special Education to parent dated February 10, 2023 at 4:11 p.m.
- Email from parent to Ms. Shamburg dated February 10, 2023 at 9:19 p.m.
- Email from parent to Ms. Shamburg dated February 13, 2023 at 12:59 p.m.
- Email from Ms. Shamburg to parent dated February 14, 2023 at 4:27 p.m.
- Email from parent to Mrs. Smith, Mr. Losey and Ms. Shamburg dated February 22, 2023 at 2:49 p.m.
- Email from Mrs. Smith to parent dated February 22, 2023 at 3:45 p.m.
- IEP Amendment form for changes not requiring a full IEP team meeting, dated March 21, 2023
- Text from parent to Mrs. Smith, Mr. Losey and Ms. Shamburg dated March 21, 2023
- Email from Ms. Shamburg to parent dated March 27, 2023 at 7:57 a.m.
- Grade 5 excel table displaying accommodations for the student, special education teacher record, undated

Background Information

This investigation involves an 11-year-old middle schooler in fifth grade. He was diagnosed with dyslexia in July 2020 and receives special education services as a child with a specific learning disability. He was referred for an initial special education evaluation in 2020 due to difficulty with reading and a recent diagnosis of Dyslexia. He sometimes reverses letters and has trouble with reading and spelling.

His special education services consist of 1) general education supports, 2) accommodations/ modifications/supplementary aids and support, 3) supports for school personnel, 4) assistive technology, and 5) positive behavioral supports. He does not qualify for ESY and takes the general assessment with access to the same accommodations he has listed on his IEP. He has two goals in English Language Arts and one goal in Mathematics. He receives 70 minutes of inclusionary support daily in each mathematics and Language arts. Additionally, he receives 30 minutes daily pull out services for study skills. He has 8 accommodations written into his current IEP 1) quiet, separate setting for assignments and assessments; 2) extra time, up to 1 school day to finish written assignments and assessments; 3) read aloud/ text to speech for assignments and assessments; 4) extended time for written responses with reduced emphasis on spelling, with graphic organizers as needed for writing; 5) reduced and modified assignments, up to 25% as needed, including homework assignments based on the increased amount of time to complete due to dyslexia. This was amended on March 23, 2023 to 25% reduction on assignments and assessments in mathematics; 6) written notes to fill gaps class notes; 7) word bank for fill in the blank questions; and 8) answer questions orally.

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 #430, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), denied the student FAPE by failing to implement the student's IEP during the 2022-2023 school year, specifically by not using the accommodations outlined in the IEP.

Positions of the Parties

The mother alleged that her son has an accommodation in his IEP to reduce his assignments and assessments by 25% and that it was not honored in his math class this school year. She states that the teacher is aware he has an IEP but thinks a student should let her know if he needs an accommodation rather than reducing the homework. The complainant says that her child was spending over an hour a night on math homework, and it was really frustrating for him. His parents were stepping in to help when they saw how much he was struggling to complete the assignments. This led them to contact the math and special education teachers to learn why the reductions were not being made. Determining when and how to reduce the homework all resulted in the parents having to make the decision to reduce the homework or placing the responsibility on the student to obtain permission prior to leaving school at the end of the day to reduce the homework. To date, the family has contacted the math teacher, special education teacher, principal, special education director and members of the school board about the student's struggles and that his accommodation was not being provided as written on his IEP in math. The logistics of coordinating the accommodation some of the time and making the student and parents responsible for deciding when to implement it were onerous and left sometimes when the accommodation was not satisfactorily used. The complainant stated the student was entitled to his accommodation and the student and parent should not be responsible for implementing it. They further express concern that when they point out to the district that the accommodation is not being implemented things get better for awhile but after a week, things start to revert back to the parents having to take on the role of requesting.

USD #430 agrees with the complainant that the student has an accommodation to reduce assessments and assignments 25% in all subjects and believe the accommodation is being implemented across all subjects including math but the logistics of coordinating it left the student and family frustrated. In fact, as recently as March 21, 2023 they provided a PWN clarifying the 25% reduction to all math assignments and assessments so no one person had to make the decision to use the accommodation. They state that all staff have talked with the special education teacher

and made decisions as to how to use the accommodation so that the content teacher ensures the student's access to content is not reduced. The staff stated that in middle school students take greater responsibility for ensuring their accommodations and learning needs are met and therefore give that responsibility to the student.

Findings of the Investigation

The investigation focused on the implementation of the two IEPs in place during the 2022-2023 school year, as well as a March 21, 2023 IEP amendment related to the accommodation of a reduction of 25% of the assignment and assessment in the student's mathematics class. The following findings are based upon a review of documentation and interviews with the parent and the district.

1. The December 3, 2021 Individualized Education Plan (IEP) included three accommodations related to reduction of assignments and assessment, "Reduce and modify assignments as needed, including homework assignments based on the increased amount of time to complete due to dyslexia;" "Math Accommodations: "Reduce assignments by 25%, provide graph paper, and multiplication tables." Testing accommodation: "questions read aloud in small groups and/or individually."
2. An email exchange at the beginning of the school year showed that there was confusion in how to implement his accommodations in the student's core classes to ensure a balance was achieved to reduce assignments when necessary but not to allow dyslexia to be an excuse to not complete work he can complete it. Further, the parent was reassured that the core teachers had a copy of the student's IEP and knew of the accommodations.
3. An email exchange in September among the parent, math teacher and special education teacher showed that the parent was assured the student would have his testing accommodations during a math test and how they would be explained to the student.
4. The December 2, 2022 Individualized Education Plan included an accommodation, "Reduce and modify assignments, up to 25% as needed, including homework assignments based on the increased amount of time to complete due to dyslexia" This accommodation was to be provided during assessments and assignments in the IRC room, classroom, or other setting for the duration of 12/02/2022 through 12/01/2023. The meeting minutes stated, "Math assignments can be cut by 25%".

5. An email exchange on December 12, 2022 again showed the parent, special education teacher and math teacher working out grading homework during absences and homework exceeding 2 hours without completion.
6. An email from the parent in February to Ms. Shamburg, Mr. Losey, Mr. Cline, and families together expressed concerns that homework in math was becoming excessive again. The email and parent reported that if the student did not stop by the special education teacher's office before leaving school at the end of the day his math assignments could not be reduced. She further stated there were times that the remaining 25% of homework that was not completed was completed the next day during independent practice rather than working on that day's new content.
7. An email on February 10, 2023 from the Special Education Director to the parent and student's teachers clarified a proposal resulting from a phone conversation of how the 25% reduction accommodation would be implemented in regard to amount of time for homework. An offer to consider changing the student's math services/teacher was also included.
8. An email on February 13, 2023 reports that the parents would like the 25% off homework assignments in math at this time and that they will plan not to change math teachers for student at this time.
9. An email on February 22, 2023 reports that the 25% off of the assignment was provided.
10. An email on March 20 from the Special Education Director to the parent reassured the parent that the IRC and math teachers were made aware of the decision about the 25% accommodation change.
11. The IEP Amendment form for changes not requiring a full IEP team meeting dated March 21, 2023 stated, "Beginning or 3/21/2023 and lasting for the duration of the IEP, the student will have the following accommodation added to his IEP : 25% reduction on all math assignments including assessments. The frequency of this accommodation is daily. Location is in the special education and regular education classroom and the duration is for the length of the IEP."
12. A text exchange on March 21, 2023 shows that the 25% reduction was not used for an in-class math quiz. The math teacher stated she forgot this one time. She stated the special education teacher had started making the accommodation and she forgot this one time during an in class quiz.
13. An email from the Special Education Director on March 27 stated, "The IRC teacher will have all of the student's math assignments marked off 25% before the student gets

them. Quizzes and tests will be taken in the IRC teacher's classroom so he will also be sure to get the 25% marked off. If an assignment ever does get sent home where you see that there hasn't been a reduction in problems, I trust you to choose the ones you think should be marked off. I hope that doesn't happen, but I also recognize that mistakes still have the potential to happen, and this will help us to be sure that the student gets the accommodation that is on his IEP."

14. The math teacher and special education teacher stated during the interview that the logistics to ensure the accommodation occurs are in place. A copy of the math book is available to the special education teacher and the reductions are made and provided to the student automatically. The math teacher reported that the review parts of the assignments are routinely considered first for removal, so the student does not miss homework practice on the current content.
15. The district stated during the interview that moving to the middle school all students are expected to take greater responsibility to ask for accommodations and needs for their learning, regardless of whether they have an IEP or not. The staff state that they regularly talk with families about this at the fall parent/teacher conferences.
16. All content teachers shared how they work with the special education teacher to reduce content to ensure curriculum is not missed and agreed each content area is different.
17. The student's IEP showed he is working on grade level content with the IEP services and accommodations. His teachers report his grades are A's and B's.
18. The parent agreed that the IEP amendment made on March 21, 2023 to automatically reduce assignments by 25% is working.

Applicable Regulations and Conclusions

Federal law at 34 C.F.R. 300.17(d) and K.A.R. 91-40-19(a) stipulates that Free Appropriate Public Education (FAPE) means that special education and related services are provided in conformity with an individualized education program (IEP). Further, each teacher shall provide special education services to the child in accordance with the child's IEP. In this case the following is found:

Interviews with the Mathematics, Language Arts, and Science/Social Studies teachers revealed that the student's teachers were aware of the student's dyslexia and the 25% reduction accommodation and agreed the student needed the 25% reduction. Further, they described adjustments made in how they presented or had students practice content within class to use the accommodation class-wide or individually. Emails show

interactions between the parents and school staff discussing how the accommodation was implemented and breakdowns where parents and the student had to take the initiative to ensure it was implemented.

The accommodation was written in the two annual IEPs in a way that made implementation difficult to manage. The content of mathematics made it particularly onerous to implement because it required a level of communication between school staff, parents and child that led to breakdowns. The other content areas are more language-based and assignments can be more easily reduced without narrowing the curriculum. It is found that the accommodation was implemented however its use was implemented differently in the content areas and required ongoing negotiation to be implemented. The accommodation continued to be revised and refined to reduce the staff, family, and student effort to implement it. It appears that the March 21, 2023 amendment has achieved that. That does not diminish the effort the family took to arrive at a successful and sustainable implementation of the accommodation. The procedures for how to collaborate between core teachers and the special education teacher should be standardized and shared readily with the parents so less effort is spent learning how to resolve the implementation.

Based on the foregoing, it is ***not*** substantiated that USD #430 failed to implement the IEP by not implementing the 25% reduction in assignments and assessments in mathematics.

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

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KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #229
ON APRIL 13, 2023

DATE OF REPORT April 24, 2023

This report is in response to a complaint filed with our office on behalf of the student by his father, the father In the remainder of the report, the student will be referred to as "the student." The father will be referred to as "the father," "the parent," or "the complainant." The mother will be referred to as "the mother."

The complaint is against USD #229, Blue Valley Public Schools. In the remainder of the report, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #229.

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 13, 2023, and the 30-day timeline ends on May 15, 2023.

Investigation of Complaint

Gwen Beegle, complaint investigator, used the emails exchanged between the parent, the district, the complaint investigator, and KSDE personnel to clarify the issues in the complaint. One concern was raised on the written complaint, which was that the district did not adhere to the 60 day time limit to complete the evaluation. An additional concern was mentioned in the emails attempting to reach a resolution between the parties; this was that no paperwork had been received by the parent for Extended School Year. Because this issue was addressed in a prior complaint investigation, it was not investigated here.

Gwen Beegle and Donna Wickham interviewed Mark Schmidt USD #229 Assistant Superintendent of Special Education on April 17, 2023. The complaint investigator also received emails from the parent and USD #229 between April 14, 2023 and April 20,

2023. Because they include the parties in addition to the complaint investigator, these emails are listed in the evidence list below.

In completing this investigation, the complaint investigator reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

Prior Written Notice for Evaluation or Reevaluation and Request for Consent, dated January 19, 2023, and signed by the parent giving consent on January 19, 2023
Notice of meeting to review evaluation, determine eligibility and discuss changes to the IEP dated March 22, 2023 for a meeting on April 20, 2023.
Email from Mark Schmidt, Director of Special Education, to the parent, Crista Grimwood (KSDE), Gwen Beegle (Complaint Investigator), Mark Ward (KSDE), Brian Dempsey (KSDE) and Ashley Niedzwiecki (KSDE) dated April 14, 2023 at 1:31 p.m.
Email from Dr. Schmidt to the parent, Dr. Grimwood, Dr. Beegle, Mr. Ward, Mr. Dempsey and Ms. Niedzwiecki dated April 14, 2023 at 1:50 p.m.
Blue Valley School District Calendar, 2022-2023
Email from the parent to Dr. Schmidt, Dr. Grimwood, Dr. Beegle, Mr. Ward, Mr. Dempsey and Ms. Niedzwiecki dated April 14, 2023 at 2:17 p.m.
Email from Dr. Schmidt to the parent, Dr. Grimwood, Dr. Beegle, Mr. Ward, Mr. Dempsey and Ms. Niedzwiecki dated April 14, 2023 at 2:59 p.m.
Email from the parent to Dr. Schmidt, Dr. Grimwood, Dr. Beegle, Mr. Ward, Mr. Dempsey and Ms. Niedzwiecki dated April 14, 2023 3:19 p.m.
Certified mail receipt, Tracking #70220410000077123514, with April 15, 2023 attempted delivery
Email from Dr. Schmidt to the parent, Dr. Grimwood, Dr. Beegle, Mr. Ward dated April 17, 2023 at 10:09 a.m.
Email from the parent to Dr. Schmidt, Dr. Grimwood, Dr. Beegle, Mr. Ward dated April 17, 2023 10:33 a.m.
Email from the parent to Dr. Schmidt, Dr. Grimwood, Dr. Beegle, Mr. Ward dated April 17, 2023 11:00 a.m.
Email from Dr. Schmidt to the parent, Karen Venables (Principal, IVE) and Dr. Beegle dated April 17, 2023 at 12:33 p.m.
Email from the parent to Dr. Schmidt, Ms. Venables, and Dr. Beegle dated April 17, 2023 at 12:46 p.m.
Email from Dr. Schmidt to the parent, Ms. Venables and Dr. Beegle dated April 17, 2023 at 1:50 p.m.

Email from the parent to Dr. Schmidt, Ms. Venables and Dr. Beegle dated April 19, 2023 at 3:54 p.m.
Email from Dr. Schmidt to the parent, Ms. Venables and Dr. Beegle dated April 19, 2023 at 4:37 p.m.
Email from the parent to Dr. Schmidt, Ms. Venables and Dr. Beegle dated April 19, 2023 at 6:18 p.m.
Email from the parent to Dr. Schmidt, Ms. Venables and Dr. Beegle dated April 20, 2023 at 6:38 a.m.
Prior Written Notice for eligibility, change in services, material change in services, other IEP changes dated and signed by the parent on April 20, 2023.
IEP for the student, signature page, April 20, 2023
Meeting notes for [student name] dated April 20, 2023
Speech Language Impairment basis for Eligibility Determination, dated and signed April 20, 2023

Background Information

This investigation involves a nine-year-old student who is enrolled in second grade at Indian Valley Elementary in USD #229. He received special education and related services as a child with a developmental disability per the Individuals with Disabilities Education Act (IDEA) during the 2022-23 school year and he recently received his triennial reevaluation (April 20, 2023) to determine continued eligibility, which changed his disability to Speech Language Impairment. His prior IEP (up to April 20, 2023) focused on reading and language, with in-classroom special education support in the general second grade classroom, resource room services, occupational therapy consultation and speech language therapy. The student previously received Part C services in the district. He is described as a pleasant and polite child who is dual language in English and Spanish. His reading achievement is delayed, and assessments indicate that his instructional reading level is second grade and frustration reading level is third grade, with areas of strength in vocabulary and high frequency word recognition and a weakness in phonics. The student lives at home with his parents. He does not have a behavioral intervention plan, nor does he have health conditions that affect his academic performance or school attendance.

ISSUE ONE: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to adhere to reevaluation timelines, specifically by providing the evaluation report and planning a meeting with the parent within 60 days.

Positions of the Parties

The complainant alleged that the district failed to meet the 60 day timeline for the evaluation. The complainant stated that he was not available to meet with the district at the proposed April 20, 2023 meeting date and returned a signed NOM refusing to that date. The complainant stated that he was available to meet on May 2, 2023 if he received the written draft report two weeks prior to the meeting.

The district refuted this allegation, stating that it had made a good faith effort to meet the 60 day timeline by providing a Notice of Meeting on March 22, 2023 for a meeting on April 20, 2023, and by suggesting several solutions to the parent's scheduling concerns after that meeting date was rejected. The district offered to meet at the parent's convenience on May 2, 2023 if the parent agreed to an extension of the 60 day timeline.

Findings of the Investigation

The following findings are based upon a review of documentation and emails between the complaint investigator, KSDE, and staff in USD #229.

- The parent gave consent for the student's reevaluation on January 19, 2023, which began the 60-school-day timeline. Using the Blue Valley Calendar, excluding school cancellations, the timeline ends on May 1, 2023.
- The school district provided a Notice of Meeting on March 22, 2023 for a meeting to be held on April 20, 2023. The parent declined this date on April 13, 2023, seven days before the meeting and the date of the complaint's filing. The district offered additional scheduling options, as stated in Dr. Schmidt's email to the parent and others dated April 14, 2023 at 1:31 p.m.: "I understand that you wish to have more time to review the documents prior to the re-evaluation review meeting, I would propose the following [a] Reschedule the re-evaluation meeting at a mutually agreeable time prior to May 1, 2023. [b] Sign an extension to allow the district to exceed the 60 days, and reschedule the re-evaluation meeting at a mutually agreeable time after May 1, 2023. [c] Attend the originally scheduled meeting on April 20, 2023."

- The parent refused these options and asked for a meeting date on May 2, 2023 and to receive the school's evaluation report in advance of the meeting.
- The district and the parent agree that documents are sent to the parent via certified and USPS mail. The district reported and provided a certified mail receipt stating that they mailed the evaluation report and the parent's rights to the parent by certified mail on April 13, 2023; this mail was scheduled to be delivered on April 14, 2023, and USPS documented an attempted delivery on April 15, 2023 when no one was present to sign for the letter. On April 17, 2023 the parent claimed that he had not received the certified mail. On April 17, 2023 the district provided five alternatives for the parent to acquire the mailed report or to get another copy at the school or by email.
- By email, the district confirmed that the evaluation, eligibility and IEP meeting would be held on April 20, 2023 due to the inability to schedule another conference date with the parent and having no signed extension in place.
- Documents confirm that the parent attended the April 20, 2023 evaluation, eligibility, and IEP meeting and signed a prior written notice giving consent for changes in the IEP services on that same date.

Applicable Regulations and Conclusions

The Kansas Special Education Process Handbook states: "Kansas has established a 60 school-day timeline consistent with federal regulations (K.A.R. 91-40-8(f); 34 C.F.R. 300.301(c)). The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services" (p.41). K.A.R.91-40-8(f) states that within 60 school days of the date the agency receives written parental consent for the evaluation, the district must (1) conduct the evaluation, (2) determine eligibility and conduct an IEP meeting if the child is eligible, and (3) implement the child's IEP.

In this case, consent for the re-evaluation was given by the parent on January 19, 2023 and the evaluation, eligibility and IEP meeting was held on April 20, 2023, within the 60-school-day timeline which ends on May 2, 2023.

According to K.A.R. 91-40-17(a)(2), a Notice of Meeting must be provided to the parents in writing at least 10 days prior to the meeting and that meeting should be scheduled at a mutually agreeable time. Schools must attempt to involve parents in an IEP meeting and must document their repeated attempts to schedule a meeting with a parent that is not available at the originally scheduled time.

In this case, adequate notice was provided for the April 20, 2023 meeting and the school made and documented their attempts to schedule a meeting at a mutually agreeable time within the 60-school-day requirement. In addition, the school offered an extension to the parent if the 60 school days would be inadequate for the parent to prepare and participate. The parent attended the April 20, 2023 meeting and participated in the student's eligibility and IEP conference.

Based on the foregoing, according to IDEA and Kansas special education regulations it is *not* substantiated that the district failed to adhere to reevaluation timelines, specifically by providing the evaluation report and planning a meeting with the parent within 60 school days.

Right to Appeal

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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.

Gwen P. Beegle, Ph.D.
Gwen P. Beegle, Complaint Investigator

Donna Wickham, Ph.D.
Donna Wickham, Complaint Investigator

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KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON MARCH 28, 2023

DATE OF REPORT MAY 2, 2023

This report is in response to a complaint filed with our office on behalf of the student by his parents, The parents. In the remainder of the report, the student will be referred to as "the student" and The father will be referred to as "the father or stepfather" and The mother will be referred to as "the mother" while both of them will be referred to as "the parents".

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 and USD #259 received the complaint on March 28, 2023 and the timeline to investigate the allegations was extended by five days due to the illness of the investigator.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parents by telephone on April 20, 2023 and again on April 24, 2023 as part of the investigative process.

USD #259 made the following school district staff available for a telephone interview on April 13, 2023:

Dr. Erica Shores, Mediation/Due Process Supervisor for USD #259
Gregory Croomes, Principal of L'Ouveture Magnet School
Gabriella Garcia, School Nurse at L'Ouveture Magnet School
Kimber Kasitz, Director of School Health Services for USD #259

In addition, USD #259 made the following school staff available for a telephone interview on April 14, 2023:

Dr. Erica Shores, Mediation/Due Process Supervisor for USD #259
Ryan Alliman, Director of Interrelated Programs for USD #259
Corie Bishop, Campus Support for L'Ouveture Magnet School

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. While all of these documents were used to provided background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) amendment dated March 29, 2022 to the IEP dated February 10, 2022
- 2021-22 School Year Calendar for USD #259
- Student's Health Room Log dated August 16, 2022 through March 31, 2023
- Student's ERASE (Explain, Reason, Appropriate, Support, Evaluate) Plan dated October 24, 2022 and reviewed in December 2022 and February 2023
- IEP amendment dated October 24, 2022 to the March 29, 2022 IEP amendment
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent date October 24, 2022
- Student's Health and Safety Plan dated November 1, 2022
- IEP dated February 1, 2023
- PWN dated February 1, 2023
- Notes from the February 1, 2023 IEP team meeting handwritten by the parents
- Audiotape of the February 1, 2023 IEP team meeting made by the parents
- Email dated February 9, 2023 at 10:31 p.m. written by the mother to Gregory Croomes, school principal
- Letter dated February 9, 2023 written by the mother
- Emails dated February 10, 2021 at 11:59 a.m. written by Mr. Croomes to the mother
- Email dated February 24, 2023 at 4:50 p.m. written by the mother to Mr. Croomes
- Email dated February 24, 2023 at 5:51 p.m. written by the mother to Mr. Croomes
- Screenshot of text sent to Emily Allen, the second grade classroom teacher dated October 28, 2022 at 11:51 a.m.
- Screenshot of text between the mother and Ms. Allen dated February 28, 2023 and March 29, 2023
- Student's Seizure Emergency Action Plan (EAP) dated March 31, 2023

- USD #259 Department of Health Services Seizure Therapeutic Protocol for Absence, Simple Focal, Complex Focal, Tonic-Clonic/Gran Mal, and Convulsive Seizures lasting more than three minutes
- Student's ABC Behavior Chart dated between September 30, 2022 and April 5, 2023
- Parent Contact Log written by the student's special education teachers dated between October 5, 2021 and March 29, 2023
- Parent Contact Log written by the student's general education teachers dated between October 19, 2021 and March 28, 2023
- Response to the Allegations dated April 11, 2023 written by Dr. Erica Shores, Mediation/Due Process Supervisor for USD #259

Background Information

This investigation involves an eight-year-old male student who is enrolled in the second grade at the L'Ouveture Magnet School in USD #259. The student transferred with an IEP from another school building in USD #259 at the beginning of the 2022-23 school year. The student currently has an IEP to address academics, social skills, and behavior.

His most recent evaluation was conducted on February 9, 2022 at which time he was found eligible for special education and related service under the exceptionality category of Other Health Impaired. The student has medical diagnoses of asthma, mood disorder, seizure disorder, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), Post-traumatic stress disorder (PTSD), and anxiety. In addition, the student's medical records reflect diagnoses of Autism, Dyslexia, and a Specific Learning Disability in reading from several different agencies.

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 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 IEP, specifically related to behaviors resulting from his seizure disorder, during the 2022-23 school year.

Positions of the Parties

The parents believe USD #259 has not implemented the student's IEP in regards to the required services, accommodations, and modifications during the 2022-23 school year at L'Ouveture Magnet School. The mother stated,

> Several times this school year, I along with my husband have contacted the school due to concerns about his IEP not being followed or the district's seizure protocols being followed to better my son's education and provide the necessary accommodations and medical protocols in place listed for him on his IEP. . . Unfortunately, there has been no improvements or resolution.

The parents were specifically concerned that the school staff were not identifying the behaviors associated with the student's seizures and thus failing to offer a break or other appropriate response to address the behavior occurring as a result of his seizure disorder prior to escalating the student's behavior to the point that he would have a meltdown in class.

USD #259 reported school staff were aware that the student had a seizure disorder when school started on August 15, 2022 and that the school nurse had provided copies of all necessary health forms to the parents during parent/teacher open house at the beginning of the school year. The parent provided information about the medication and the plan to not keep any seizure medication at school on September 7, 2022. The parent also wanted to be called when the student had a seizure at school. The district reported ongoing communication and conferences between the teachers, school nurse and parents as well as two IEP team meetings regarding his seizures, medication, and behavioral concerns at school.

USD #259 indicated that the student's IEPs did not include any services, accommodations, or modifications related to his seizure disorder until following the February 1, 2023 IEP team meeting. At that meeting, several accommodations were added related to the student's seizures and those accommodations have been implemented to date.

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 student had three IEPs in effect during the 2022-23 school year. The first IEP in effect was the March 10, 2022 IEP amendment to the February 9, 2022 IEP. The health section of the IEP notes the student has medical diagnoses of Asthma, mood disorder, seizure disorder, ADHD (Attention Deficit Hyperactivity Disorder), ODD (Oppositional Defiant Disorder), PTSD (post-traumatic stress disorder), seasonal allergies, anxiety, gender identity, and vision impairment (astigmatism) for which the student wears glasses. This IEP also notes the student does not require a Health Care Plan. There are no services, accommodations, or modifications that are noted to be related to the student's seizure disorder or the district's seizure protocol written in this IEP.

However, the IEP does state that the student's behavior does impact his learning and the learning of others and significantly affects his ability to focus on academics in the general education setting. The IEP describes the impeding behaviors as "hitting, kicking, yelling, eloping the room, refusal to work, tearing up papers, and destruction of property".

The IEP includes both social and behavioral goals as well as accommodations including "frequent breaks that are earned, walks when he becomes frustrated, preferred seating, extra time to complete tasks, first-then wordage used, visual schedule, warnings before transitions, and three break cards he can utilize throughout the school day". In addition, the IEP describes a positive behavior support plan utilizing happy faces and earning rewards to address the behavioral concerns.

The second IEP in effect was the October 24, 2022 IEP amendment of the March 10, 2022 IEP amendment. This IEP includes the same description of the student's seizure disorder in the Health/Physical and in the Relevant Medical Findings sections. The amended IEP updates the student' medications noting "He is currently only taking his seizure medication which also acts as a mood stabilizer" and references the addition of an ERASE (Explain, Reason, Appropriate, Support, Evaluate) Plan to address the continuing behavioral concerns. Again, there are no services, accommodations, or modifications that are noted to be related to the student's seizure disorder or the district's seizure protocol written in this IEP.

A safety plan was developed for the student on November 1, 2022 following an incident where the student climbed on a heater, opened a window, and said he was going to jump out.

The third IEP in effect was developed on February 1, 2023 through the annual IEP review/revision process at an IEP team meeting that included the parents. The parents were concerned that the school nurse did not attend this IEP team meeting; however, USD #259 noted that the school nurse is not a required member of the IEP team as defined by the IDEA and information about the student's seizure disorder was included and updated with parent input during the IEP team meeting.

This IEP includes the same information as the previous two IEPs in regards to the student's seizure disorder. However, at parent request, this IEP includes two specific accommodations related to the student's seizure disorder as noted below:

- Ask the student to retrace his steps or repeat directions when he is not following them because, when having an absence seizure, the student might act like he understands what going on but he's just moving through the motions.
- Send the student to the nurse if he randomly starts crying because the student "gets cluster seizures and often cries before or after having one."

The February 1, 2023 IEP states that the student will receive 170 minutes of pull out time for decoding and math. He will receive 90 minutes of class within a class services for specials, social studies, and science time. He will receive 20 minutes of counseling twice a week. This IEP does not reference the district's seizure protocol.

The parents were provided with and provided consent to a prior written notice proposing changes in the IEP as noted below on February 1, 2023:

> The IEP Team updated the Impact of Exceptionality statement and present levels of academic achievement and functioning. The accommodations and measurable annual goals were reviewed and revised based on the updates to the student's present levels. A measureable annual goal to address the student's social/emotional needs was also developed . . . the student has had difficulty with peer relationships and self-regulating emotional responses to adult requests. To help him progress socially and emotionally, he will continue to receive support in a resource class setting for math and decoding.

The ABC Behavior Chart entries dated after February 1, 2023 included twenty instances where school staff responded the student's inappropriate behavior in the school setting and each time the student was offered breaks, reminded of his positive behavior intervention plan and rewards, cued to use a coping strategy, redirected, and/or the adult discussed and explained the situation and his choices in a 1-1 setting as required by his ERASE plan and IEP. On seven of these instances, the nurse was asked to assess the situation for a possible seizure based on his behavior during the incident.

On February 9, 2023, the mother emailed the building principal regarding a concern with the paraprofessional working with the student not being observant of any seizure activity and then contacting the parents. Mr. Croomes replied via email the next day and explained that the paraprofessional is responsible for reporting concerns to the appropriate school staff and that those school staff are responsible for contacting parents. Mr. Croomes stated,

> If he has emergent needs, she is aware that she needs to contact the school nurse. An example of this is when the para brought the student to the nurse because he was not feeling well during a PE activity that involved a strobe light.

The student's Health Room Log shows the school nurse reviewed the district's seizure protocol with the school staff working with the student on February 10, 2023. On February 13, 2023, the school nurse and the mother discussed the district's seizure protocol and the need for a seizure emergency action plan (EAP). Because the student did not have any seizure medication at the school, the nurse suggested that the parents contact the student's physician for information and guidance.

The school nurse was involved with seizure assessments of the student due to behavioral incidents on February 1, and 23, 2023. The logs show that the school nurse made contact with the father following the assessment on February 15. On February 23, the log shows the nurse reported "No seizure like activity was observed" so the parents were not contacted.

The following incident was reported in the student's Health Room Log on February 24, 2023:

> Nurse called to RM 18 by Principal Croomes. When this nurse entered classroom student was sitting in a partitioned off corner of the room. This nurse asked the student how he was feeling and he states he was mad, he explained that he was asked to do his math work; however, he wanted to draw a penguin

> instead. This nurse validated his feelings, but explained there are expectations that need to be met before free time. The nurse then asked the student to take a walk, rest in the health room, or do a preferred job. He declined. The nurse than asked the student if he would like a fidget. He stated that he threw all of them already. When asked what he needed or what the nurse could do for him, he responded "Nothing". He appeared to become more frustrated. He then started repeatedly hitting and attempting to knock over the partition/fake wall and bookshelf. Principal Croomes and this nurse held onto these furniture items preventing them from falling over. This nurse removed / reorganized items/furniture in near proximity to where the student currently was that could cause harm. He then threw every item that was still within his reach. He then moved on to the rest of the classroom and did the following: hit a book off of a shelf, ripped phone cords from the wall, flipped over a desk more than one time, screamed, threw the classroom phone to the floor, threw a cup of pencils in the direction of this nurse, ripped down wall décor, swung open cabinet doors, etc. Mrs. Reimer-Ho [student's special education teacher] reentered the classroom during this time. When the student heard his stepfather would be coming to the school, the student became emotional and started to deescalate. This nurse asked if he would like to rest in a dark/quiet area as he appeared worn out. He state he was not tired. He then sat on the floor and this nurse brought him a cup of water which he accepted. After a few minutes the student was asked if he was ready to start picking up the classroom and he calmly said no. Stepfather arrived shortly after. Mood changed throughout the incident.

The mother sent an email to Mr. Croomes on February 24, 2023 at 4:50 p.m. to express her concerns that the student's IEP was not being followed in regards to responding to behavior related to his seizures. The mother stated,

> The nurse is looking for eye fluttering are you serious!? Says "no seizure activity", excuse me but that is BECAUSE HE ALREADY HAD ONE! He's in the post seizure phase! And that is CLEARLY what we discussed and what to do during his IEP.

The mother emailed Mr. Croomes again that same day at 5:51 p.m. and stated,

> I have a recorded conversation from today's events that state he clearly had seizures related activity and post seizure symptoms that are very clearly written in his IEP. And he's being suspended when the staff did not follow the IEP instructions or the district seizure protocols. I was called and received a voicemail saying he needs to be picked up. All of the prior events and symptoms

> were exactly what we discussed in his IEP meeting. Also, the nurse is not following that as well because we discussed her needing to call us immediately if he is having any of the emotional signs we reported during the IEP meeting. She is looking for an active seizure when we have repeatedly said that's not how his are. They are abcent (sic) and simple focal seizures. And the signs and symptoms that come with them are prior and post seizure and what to look for. Your staff reported much later seeing signs and symptoms and exactly what we discussed to look for and because it was not handled how we discussed and implemented in his IEP, he is now suspended for staff's errors? He will not escalate if the IEP is followed and the district protocol are being followed as well.

On February 27, 2023, the student's Health Room Log documents a meeting between the parents and the school nurse as follows:

> Mother and stepfather came to the office requesting to speak with this nurse. This nurse went over the seizure protocol with mother and explained nursing assessment/judgement for incident that occurred on 2/24/23. The nurse expressed the need for medical collaboration with the student's doctors. Stepfather expressed frustration for request as he stated that his doctors work for them as parents and that their parent input/instructions should be sufficient . . . Parents expressed continued frustrations in regards to student's IEP. They stated there is a whole page/portion dedicated to outline his seizure that was written by Corie Bishop [Campus Support] at his last annual IEP team meeting. This nurse let parents know I was not aware of that. The only change his IEP manager informed me of was that the student was now on Adderall. This nurse let the parents know she would follow-up on this information.

Later that same day, the student's Health Room Log documents that the school nurse visited with the special education teacher to follow-up on any updates in the student's IEP regarding seizures. The special education teacher provided her with a copy of the February 1, 2023 IEP with the two new accommodations related to seizures highlighted.

On February 28, 2023, the mother informed the student's general education teacher that he was staying home that day because he had two seizures on Sunday and another one on Monday. The mother expressed concern and frustration that the student is now seeing school as a "punishment" and that school is taking a physical and mental toll on the student because he is now afraid of having "another bad day at school" on a daily basis. The mother also stated,

> He had a seizure yesterday while I was present and the nurse and other staff didn't even recognize it. So all behaviors listed in the protocol [the district seizure protocol] need to be documented as seizure related since there is no training with any of the staff being able to recognize them . . . I have provided in writing to the school before that refusal and sudden change in mood are pre and post seizure symptoms. This has been discussed many times. So the fact that that isn't being done is neglectful and abusive to deny him his needed that we have discussed many many times.

On that same date, the student's Health Room Log documented that the school nurse contacted Dr. El-Nabbouts' nurse at Kansas Pediatric Neurology regarding the conflicting opinions between school staff and parents and requesting the physician clarify and differentiate between seizure activity and behaviors. The school nurse made contact with the physician's office again on March 3 and 6, 2023. The log documents the school nurse was able to speak to Tomas Hernandez, Nurse Practitioner on March 8, 2023. The log states,

> He explained the diagnosis was made based on parent report (no video evidence, no activity seen in office, negative EEG). He would not say without certainty the behaviors were not a possible effect from his seizure disorder. He stated that it all comes down to the assessment at the time of the event. He was informed that the issue is that parents do not believe the medical assessments to be valid.

The Nurse Practitioner suggested that the school video the student's behavior with parent permission in order to obtain their medical assessment of the situation.

The school nurse was involved with seizure assessments of the student due to behavioral incidents on March 2, 3, 20 and 28, 2023. The logs show the school nurse made contact with the mother following the assessment on March 2 and it was recommended the student be told he would take a break rather than asking if he needed one. The nurse made contact with the father on March 3 and the log reflects the student responded well to being told to take a break rather than to be given a choice. On March 20, the father was called after the student refused to take a break. He attempted to intervene with the student over the phone; however this was unsuccessful. The log notes the father described the behavior exhibited during the incident as "attention-seeking" and the nurse reported "no seizure activity noted". On March 28, the log shows the nurse reported the student was oriented to time and place

throughout the behavioral incident and responded within three minutes of being told to take a break. He calmed using these interventions so the parents were not contacted.

Documentation shows a seizure EAP from Kansas Pediatric Neurology for the student was received by USD #259 on March 31, 2023. The student's Health Room Log shows the school nurse contacted the mother about obtaining the Diastat medication that was prescribed to implement the EAP on that same day.

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.

Federal regulations at 34 C.F.R. 300.323(d)(2)(ii) require that each teacher and provider who is responsible for the implementation of the IEP must be informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

In this case, all three IEPs document that the student has a seizure disorder; however, the only IEP in effect during the 2022-23 school year that specifically addresses behavior related to the student's seizure disorder was developed on February 1, 2023.

That IEP included two accommodations which require:

- Ask the student to retrace his steps or repeat directions when he is not following them because, when having an absence seizure, the student might act like he understands what going on but he's just moving through the motions.
- Send the student to the nurse if he randomly starts crying because the student "gets cluster seizures and often cries before or after having one."

It is noted that the parents provided consent to implement the February 1, 2023 IEP on that same date. However, documentation found the school nurse was unaware of the addition of the two accommodations related to seizure behavior and her responsibility to implement these accommodations as of February 27, 2023. Subsequently, the school

nurse was provided with an IEP-at-a-glance which included the two new accommodations.

The interviews and documentation also found there is still much confusion among the IEP team members in regards to when the student is experiencing a seizure and what behavior is associated with each type of seizure. It is noted that the IEP includes not only these two accommodations specifically related to behavior that reportedly indicate that an absence or cluster seizure has occurred but also includes goals, accommodations, and a positive behavior support plan to address the behaviors that impede his learning and the learning of others including hitting, kicking, yelling, eloping the room, refusal to work, tearing up papers, and destruction of property which appear to be more closely related to his diagnoses of mood disorder, ADHD, ODD, PSTD, and anxiety.

At this time, based upon the plain language of the February 1, 2023 IEP, the interviews and documentation support a finding that USD #259 did implement the IEP as written during the 2022-23 school year in regards to behaviors associated not only with the seizure disorder but also behaviors associated with the student's diagnoses of mood disorder, ADHD, ODD, PSTD, and anxiety.

The interviews and documentation show that USD #259 has made ongoing attempts to communicate with the student's pediatric neurologist to clarify and differentiate between these behaviors. Both the LEA and the parents are encouraged to continue to obtain this clarification and to collaborate through the IEP process to develop an IEP that addresses both the behaviors associated with the student's seizure disorder as well as the behaviors associated with the student's diagnoses of mood disorder, ADHD, ODD, PSTD, and anxiety.

Based on the foregoing, a violation of special education statutes and regulations ***is*** only substantiated for failing to comply with federal regulations at 34 C.F.R. 300.323(d)(2)(ii) which require that each teacher and provider who is responsible for the implementation of the IEP to be informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

In this case, documentation found the student's IEP was reviewed and revised on February 1, 2023 to include two classroom accommodation related to the student's seizure activity; however, documentation found the school nurse was not made aware of the addition of the two classroom accommodations related to seizure behavior until she was informed by the parent on February 27, 2023. It is noted that the school nurse

immediately contacted the student's IEP case manager and was provided with an updated copy of the student's IEP-at-a-Glance.

ISSUE TWO: The USD #259 in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to parent requests for staff training and information about the student's seizures to be included in the IEP at the February 1, 2023 IEP team meeting.

Positions of the Parties

The parents reported the IEP team met on February 1, 2023 to review and revise the student's annual IEP. The parents indicated the meeting lasted well over 90 minutes and they shared very specific information about the student's seizure disorder, his medication management, and strategies for how to react / support the student before, during, and after having a seizure but this information was not included in the student's IEP. The parents believe the behavioral concerns that are occurring in the school setting are the direct result of his seizure disorder and that if the school staff would just respond appropriately, the student would not have the meltdowns.

The parents stated that the school staff are not adequately trained to identify and respond to the student's seizure disorder and they requested staff be trained. However, this has not yet occurred nor been included in the student's IEP.

USD #259 denied the parent's allegation that training for school staff was discussed at the February 1, 2023 IEP team meeting. They acknowledged that the IEP team spent much time discussing the student's behaviors and gathering input from the parents on how to respond and support the student.

However, USD #259 maintains that the behaviors occurring in the school setting are not solely related to the student's seizure disorder but also his medical diagnoses of mood disorder, ADHD, ODD, PSTD, and anxiety. District staff reported the student began showing improvement in some behaviors with the ERASE plan in effect. USD #259 reported they are currently working with the student's neurologist to clarify and differentiate between the behaviors and underlying causes and plan to continue to review/revise the student's IEP as more information becomes available.

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 Issue One are incorporated herein by reference.

The audiotape and handwritten parent notes from the February 1, 2023 IEP team meeting document the parents sharing information regarding the student's seizure disorder, medication management, and strategies for how to react / support the student before, during, and after having a seizure. The handwritten notes state,

> . . . ask for it to be implemented prior to escalation and what symptoms to look for that are related to autism and seizures and when to contact the nurse and parents. I really wish the nurse was here today for this meeting. Mrs. Bishop [Campus Support] said the nurse would get everything from today and contact me prior to IEP being rewritten. I described his stemming and pre-during-post seizure symptoms and asked that those be added to his IEP . . . went over how prompting works at home and what his seizures look like and how he functions during them and how to support him during and after. Gave many examples . . . random actions, wandering, confusion. R-Ho [abbreviation for the last name of the special education teacher] said she would write in an accommodation for seizure recognition and re-direction.

The parents reported and the handwritten notes document that the LEA discussed reducing the amount of pull out special education services; however, the parents were not in agreement with this proposal. The IEP team considered the parent's input and the February 1, 2023 IEP continues to require the 170 minutes of pull out special education services for decoding and math as was required in the previous IEP.

The February 1, 2023 IEP does not require any additional training for school staff.

The parents reported discussing training for school staff on multiple occasions and with a variety a USD #259 staff during the 2022-23 school year. However, they acknowledged that training for staff was not discussed at the February 1, 2023 IEP team meeting.

Applicable Regulations and Conclusions

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.

In this case, documentation and interviews show the IEP team meeting lasted well over 90 minutes and the IEP team, including the parents, discussed information about the student's seizure disorder, his medication management, and strategies for how to react / support the student before, during, and after having a seizure. In addition, the IEP team updated the present level of academic achievement and functional performance based upon data from the ERASE plan, the ABC Behavior Charts, and the Health and Safety Plan

The resulting IEP document includes information provided by the parents regarding the student's seizure disorder and how to respond in the form of two accommodations. In addition, the IEP includes goals, services, and a positive behavior support plan to address the behaviors that are impeding his learning and the learning of others. The team discussed reducing the amount of pull out special education services but parents were not in agreement with this proposal and the resulting IEP continues the same level of services as the previous IEP.

The parents were provided with PWN describing the updates made to the IEP document and provided written consent for these changes on February 1, 2023. The PWN stated,

> The IEP Team updated the Impact of Exceptionality statement and present levels of academic achievement and functioning. The accommodations and measurable annual goals were reviewed and revised based on the updates to the student's present levels. A measureable annual goal to address the student's social/emotional needs was also developed . . . the student has had difficulty with peer relationships and self-regulating emotional responses to adult requests. To help him progress socially and emotionally, he will continue to receive support in a resource class setting for math and decoding.

It is noted that the parents acknowledged staff training was not requested nor discussed at the February 1, 2023 IEP team meeting.

Based on the foregoing, a violation of special education statutes and regulations is *not* substantiated for failing 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 parents requested information about the student's seizure disorder and how to respond appropriately be added to the IEP and USD #259 did add this information in the form of two accommodations.

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 area:

A. Federal regulations at 34 C.F.R. 300.323(d)(2)(ii) which require that each teacher and provider who is responsible for the implementation of the IEP to be informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

   In this case, documentation showed the student's IEP was reviewed and revised to include two classroom accommodation related to the student's seizure activity on February 1, 2023. However, documentation also showed the school nurse was unaware of these changes related to seizure behavior until she was informed by the parents on February 27, 2023. It is noted that the school nurse immediately contacted the student's IEP case manager and was provided with an updated copy of the student's IEP-at-a-Glance.

Based on the foregoing identified violations, 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 at 34 C.F.R. 300.323(d)(2)(ii) .
2. USD #259 shall review its procedures and practices related to special education case managers informing each teacher and provider who is responsible for the implementation of a student's IEP of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. USD #259 will update or create a written procedure / checklist for special education case

managers to follow after each IEP team meeting to ensure this communication takes place. USD #259 will develop a plan to share this written procedure / checklist with the special education staff within the district no later than June 1, 2023. USD #259 shall provide SETS with a copy of the written procedure / checklist and documentation that the plan for distribution was implemented no later than August 15, 2023.

3. 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. 91-40-51(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 March 15, 2023

DATE OF REPORT April 14, 2023

KANSAS STATE DEPARTMENT OF EDUCATION

SPECIAL EDUCATION AND TITLE SERVICES

This report is in response to a complaint filed with our office on behalf of the student by the parent. In the remainder of the report, the student will be referred to as "the student" and The parent will be referred to as "the parent" or "the complainant."

The complaint is against USD #437 (Auburn Washburn Public Schools). In the remainder of the report, USD #437 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.

Investigation of Complaint

Doug Tressler, Complaint Investigator, interviewed the parent by telephone on April 11, 2023.

USD #437 made the following school staff available for a telephone interview on April 6, 2023:

- Kevin Raley, Director of Special Education
- Jamie Callaghan, Executive Director of Learning Services
- Chris Appuhn, Principal Tallgrass Learning Center
- Whitney Ellis, Social Worker/ Behavior Specialist
- Errin Bennett, School Psychologist

- James Bauck, 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:

- Prior Written Notice (PWN) Change of placement dated 3.6.2023
- Notice of Meeting (NOM) for 3.27.2023 dated 3.23.2023
- Manifestation Determination Review (MDR) dated 2.9.2023
- Notice of Meeting (NOM) dated 02.7.2023 for MDR
- Notice of Extended Term Suspension dated 2.7.2023
- Notice of Short-Term Suspension dated 1/31/2023
- Individualized Education Program (IEP) dated 9.29.2022
- Notice of Meeting (NOM) dated 9.14.2022 for 9.29.2022 IEP.
- Prior Written Notice (PWN) USD #437 dated 9.29.2022 for 9.29.2022 IEP.
- Behavior Intervention Plan included in 9.29.2022 IEP.
- Behavior Log dated 9.2.2022-1.31.2023
- Communication log 8.12.22-3.28.23
- Previous USD 437 IEP dated 10.5.2021 initiated upon return from JDC501.
- Email dated 10.26.22; Whitney Ellis to Parent addressing behavior and attendance.
- Email dated 3.2.2023 Parent to School regarding Special Ed services during suspension.

Background Information

This investigation involves a student who is eligible for special education and related services under the exceptionality category of Other Health Impaired (ADHD) and Specific Learning Disability. The student lives with the student's mother. The student has received special education and related services since the student's enrollment into the district.

Issues

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act gives 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 the complaint, the parent listed two issues. However, under the first issue, the parent identified two separate concerns. For clarity, those concerns are identified separately

below as Issue One and Issue Two. The parent's other listed issue will be identified as Issue Three.

> 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.

Parents Position

It is the position of the parent that the schools repeated failure to implement the IEP led to the student's lack of progress and expulsion.

Districts Position

It is the position of the district that the student's expulsion was due to behavior without a direct and substantial relationship to the student's disability and that the conduct in question was not a result of the school's failure to implement the IEP.

Applicable Statutes and Regulations

K.A.R. 91-40-51, Kansas regulations state that, in filing a formal complaint, a parent must allege that the district has violated a special education law or regulation.

Federal regulations implementing the IDEA at 34 C.F.R. 300.101(a), 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 special education and related services in conformity with the IEP.

Once the IEP is developed, IEP Teams must: (1) review the child's IEP periodically, but not less than annually, to determine whether the child's annual goals are being achieved and revise the IEP, as appropriate, to address any lack of expected progress towards the annual goals in the child's IEP and in the general education curriculum, the child's anticipated needs, or other matters. (34 CFR §300.324(b)(1)(i)-(ii)(A); 34 CFR §300.324(b)(1)(ii)((D)-(E)).As soon as practical, but not later than 10 school days after the date on which the decision is made to change the placement of a child with a disability because of a violation of a student code of conduct, the representative of the school, the parent, and other relevant members of the child's IEP team, as determined by the parent and the school, must meet to review (K.S.A. 72-3433(d)(2)):

- all of the relevant information in the child's file,
- the child's IEP,
- any teacher observations, and
- any relevant information provided by the parent. (K.S.A. 72-3433(e)(1)).

Based on its review of all the relevant information, the group must determine if the conduct in question was:

a. caused by, or had a direct and substantial relationship to the child's disability; or
b. the direct result of the school's failure to implement the child's IEP.) (K.S.A. 72-3433(e)(2)(A)-(B)).

If it is determined by the group that the conduct of a child was a result of either "a" or" "b" above, then the conduct must be determined to be a manifestation of the child's disability. (K.S.A. 72-3433(e)(3)).

The school must provide parents with prior written notice of meeting before convening meetings regarding the manifestation determination and the services to be provided during disciplinary removals (K.A.R. 91-40-25). However, the school is required to give only 24 hours prior (written) notice of a meeting to the child's parents (K.A.R. 91-40-38(d)).

If the parent of a child with a disability, the LEA, and the relevant members of the child's IEP Team cannot reach consensus on whether or not the child's behavior was a manifestation of the disability, OSEP guidance states the LEA must make the determination and provide the parent with prior written notice pursuant to 34 C.F.R. § 300.503.

The parent of the child with a disability has the right to exercise their procedural safeguards, including by requesting mediation and/or an expedited due process hearing to resolve any disagreement about the manifestation determination. (K.S.A. 3434)(a); K.A.R. 91-40-28(a); 34 -C.F.R. §§ 300.506; and 300.532(a)).

The parent has the right to file a State complaint alleging a violation of IDEA related to the disputed manifestation determination. (34 C.F.R. § 300.153).

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff.

The current IEP for the student was developed on 9.29.2022. Both the mother and biological father participated in the development of the IEP. This IEP includes two goals and requires 390 total minutes per day of special education services; 360 minutes per day in the special education setting; 30 minutes one day per week for Social Work services; and 30 minutes per day transportation as a related service.

The student is in the tenth grade and has 3.5 credits towards graduation.

At the end of the first quarter in SY23-24 October14, 2022 and at the end of the first semester SY23-24 January 2, 2023 the Special Education teacher indicated that insufficient progress was made on the Math goal and the behavioral goal set in the IEP.

The district did reach out to the parent via email October 26, 2022 to discuss the student's Quarterly data.

The IEP team was never convened to review the lack of progress demonstrated by the student's quarterly progress reports.

Based on the MDR record the team members note that ADHD behavior impacted the student's ability to make progress on the IEP goals and in the regular curriculum.

Based on the MDR record the IEP team recognized that, over time, the student's primary needs had become more behavioral in nature and during Middle School the primary exceptionality had been changed to indicate Other Health Impairment and Specific Learning Disability (SLD) to the secondary.

Feb 7, 2023, the school recommended Extended Term Suspension for the incident on Jan 31, 2023.

Notice of Extended Term Suspension was sent to the parent on Feb 7, 2023. The hearing, with respect to the recommended extended term suspension, was set for Thursday, Feb 9, 2023, at 11:00 am.

A Manifestation Determination Review meeting was set for Feb 9, 2023, at 9:00 am.

Feb 7, 2023, the School Psychologist for the district called the parent to inform the parent of scheduled MDR. No answer (voice)Mailbox was full.

Feb 8, 2023, at 2:11 pm a Notice of Meeting was emailed to the parent from the district.

Feb 9, 2023, the district attempted to call the parent and allow the parent to participate in the MDR meeting by phone. No answer (voice)mailbox was full.

Feb 9, 2023, the results of the MDR were emailed to the parent.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.101(a) 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.

Once the IEP is developed, IEP Teams must: review the child's IEP periodically, but not less than annually, to determine whether the child's annual goals are being achieved and revise the IEP, as appropriate, to address any lack of expected progress towards the annual goals in the child's IEP and in the general education curriculum, the child's anticipated needs, or other matters. (34 CFR §300.324(b)(1)(i)-(ii)(A); 34 CFR §300.324(b)(1)(ii)((D)-(E)).

The behavioral supports in the IEP are inappropriate for the child. The frequency, scope or duration of the behavioral supports has proven insufficient to prevent behaviors that impede the learning of the child or others, and the consistent application of the child's behavioral supports has not accomplished positive changes in behavior based on the lack of anticipated progress on the 10/14/2022 and 1/2/2023 progress reports , but instead has resulted in behavior that continues to impede, or further impedes, learning for the child or others. As demonstrated by the child's lack of progress documented in the progress reports and listed concerns by IEP team members documented in the MDR.

The student experienced a lack of expected progress as reported by the special education teacher in two separate IEP progress reports toward the annual goals that is related to his disciplinary removals or behavioral supports, the child's IEP was neither reviewed nor revised as a direct result of the identified lack of progress. As noted in the school's record of meetings and confirmed by email from the district's Director of Special Education

If it is determined that the child's behavior is a manifestation of the child's disability the child cannot be subject to a long-term removal for the behavior. However, the school and the parents could agree to another setting. (See Letter to Huefner, OSEP, October 3, 2006 (47 IDELR 228) and 34 C.F.R. 300.532(b)(3)).

The Individual Educational Plan (IEP) is intended to be a plan designed by the IEP team, including the parent, that is reasonably calculated to enable a student to make progress in light of the child's circumstances. The implementation of the IEP is the district's provision of a free and appropriate education, the measure of which is appropriate progress by the child. While the IEP is not a guarantee of a specific educational or functional result for a child, OSEP provided guidance after Endrew F. stating that if insufficient progress is being made by the child, the measure of appropriate implementation of the IEP, in lieu of progress, is the demonstration of the district's ongoing actions to ensure that the child is receiving appropriate interventions, special education and related services and supplementary aids and services and services, and to ensure that the IEP's goals are individualized and ambitious.

The procedural implementation of an IEP requires the district to comply with specific timelines and documentation based on circumstances that impact the child's participation in the educational environment. When a disciplinary action is implemented that constitutes a change in placement the school must conduct a Manifestation Determination Review. The school must provide parents with prior written notice of meeting before convening meetings regarding the manifestation determination and the services to be provided during disciplinary removals (K.A.R. 91-40-25). However, the school is required to give only 24 hours prior (written) notice of a meeting to the child's parents (K.A.R. 91-40-38(d)). Within the complaint of failure to implement the IEP the parent states she was notified on Feb 8 at 2:11 pm of a Manifestation Determination meeting that was scheduled for Feb 9 at 9:00 am to be immediately followed by an Extended Suspension Hearing which resulted in a 186 day removal. In the documentation provided by the district, there were attempts to call the parent within the 24-hour timeframe however, those attempts were unsuccessful. The district did email the notice of meeting on Feb 8 2023, but the required 24 hours for a written notice had already expired.

Based on the districts lack of response to repeated documentation of insufficient progress by the child and the procedural error that denied the parent 24 hours notice for a Manifestation Determination Review, a violation of special education statutes and regulations *is* substantiated for failing to implement the IEP based on lack of expected

progress towards the annual goals in the child's IEP and in the general education curriculum.

ISSUE TWO: The district failed to follow the Behavior Intervention Plan (BIP) developed that was developed as a part of the Individual Educational Plan (IEP) dated 9.29.2023.

Applicable Statutes and Regulations

K.A.R. 91-40-51, Kansas regulations state that, in filing a formal complaint, a parent must allege that the district has violated a special education law or regulation.

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a)(2)(i) require school districts to develop an IEP which includes the consideration of positive behavioral interventions, supports, and other strategies to address any behavior that impedes the learning of the student or the learning of others.

Based on its review of all the relevant information, during a manifestation determination hearing, the group must determine if the conduct in question was:

a. caused by, or had a direct and substantial relationship to the child's disability; or
b. the direct result of the school's failure to implement the child's IEP. (K.S.A. 72-3433(e)(2)(A)-(B)).

If it is determined by the group that the conduct of a child was a result of either "a" or "b" above, then the conduct must be determined to be a manifestation of the child's disability. (K.S.A. 72-3433(e)(3)).

If the parent of a child with a disability, the LEA, and the relevant members of the child's IEP Team cannot reach consensus on whether or not the child's behavior was a manifestation of the disability, OSEP guidance states the LEA must make the determination and provide the parent with prior written notice pursuant to 34 C.F.R. § 300.503.

The parent of the child with a disability has the right to exercise their parental rights, including by requesting mediation and/or an expedited due process hearing to resolve any disagreement about the manifestation determination. (34 C.F.R. §§ 300.506 and 300.532(a)).

Parent's Position

The parent contends that the district failed to provide one of the accommodations specified in the student's behavior plan by not providing a separate location or "cool down" as a part of the de-escalation strategies identified in the BIP due to staffing shortages.

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.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff.

The current IEP for the student was developed on 9.29.2022. The IEP included a Behavior Intervention Plan (BIP). This BIP described a range of actions that could be used as interventions to behavior.

The Investigator interviewed members of the student's IEP team (LEA representative, Sp Ed teacher, School Psychologist, Social Worker and the Parent) all members had a consistent description of the identified interventions specific to the student and how the BIP should be implemented in the instance of a behavioral episode.

The parent reported that the school had not offered the preferred intervention of a "cool down area" defined as a separate place for the student to go when escalated. However, nothing in the BIP indicated that this intervention needed to be used exclusively or as a priority over other interventions. Specifically, the behavioral log indicated that there were occasions where this intervention was applied.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.324(a)(2)(i) require school districts to develop an IEP which includes the consideration of positive behavioral interventions, supports, and other strategies to address any behavior that impedes the learning of the student or the learning of others.

If the parent of a child with a disability, the LEA, and the relevant members of the child's IEP Team cannot reach consensus on whether or not the child's behavior was a manifestation of the disability, OSEP guidance states the LEA must make the determination and provide the parent with prior written notice pursuant to 34 C.F.R. § 300.503.

Based on the foregoing, the complaint that the school did not implement the BIP is *un*substantiated.

ISSUE THREE Failure to provide the student with Special Education Services during the time of expulsion.

Parents Position

It is the position of the parent that the school failed to provide appropriate special education services while expelled.

Districts Position

It is the position of the district that the student was not enrolled in the district upon release from Juvenile Detention Center (JDC) and therefore remained enrolled as a student of another district.

Applicable Statutes and Regulations

At K.A.R. 91-40-51, Kansas regulations state that, in filing a formal complaint, a parent must allege that the district has violated a special education law or regulation.

On the date the decision is made to make a removal that constitutes a change of placement of a child with a disability the school must notify the parents of that decision, and provide the parents with a copy of the procedural safeguards notice (K.S.A. 72-3433(d)(1); 34 C.F.R. 300.530(h)) .

A child with a disability who is removed from the child's current placement when the conduct in question is determined not to be a manifestation of the child's disability must continue to receive educational services as provided in 34 C.F.R. § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. (K.S.A. 72-3433(a)-(b); 34 C.F.R. 300.530(d)(1)).

The school must provide parents with prior written notice of meeting before convening meetings regarding the manifestation determination and the services to be provided during disciplinary removals (K.A.R. 91-40-25(a)(1) & (b)(2) However, the school is required to give only 24 hours prior (written) notice of a meeting to the child's parents (K.A.R. 91-40-38(d)).

When a disciplinary change of placement occurs, the IEP team, including the parent, determines the special education and related services to be provided during the removal. However, parental consent for the disciplinary change in placement is not required. (K.A.R. 91-40-27(a)(3)).

Further, the child must receive, as determined appropriate by the IEP team, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(d)(1).

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff.

The student violated the code of conduct on Jan 31, 2023.

The student was allowed to complete the rest of the day on Jan 31, 2023, but was suspended for Feb 1 and 2, 2023.

Feb 3, 2023, the student returned to school but was arrested upon arrival at school due to charges filed by school staff in association with the Jan 31, 2023, incident.

Feb 3, 2023, district enrollment records show the parent called and said that (the student) will no longer be attending the District.

Feb 6, 2023, the district, called the parent to inform the parent about the possibility of an Extended Term Suspension and the requirement for an MDR.

When interviewed the parent indicated she did not dis-enroll (the student) from the district.

Feb 6, 2023, the district received a records request from another district for (the student). The district enrollment records show (the student) as "transfer to a public school in a different district".

Feb 7, 2023, the school recommended Extended Term Suspension for the incident on Jan 31, 2023.

Notice of Extended Term Suspension was sent to the parent on Feb 7, 2023. The hearing, with respect to the recommended extended term suspension, was set for Thursday, Feb 9, 2023, at 11:00 am.

A Manifestation Determination Review meeting was set for Feb 9, 2023, at 9:00 am.

Feb 7, 2023, the School Psychologist for the district called the parent to inform the parent of scheduled MDR. No answer (voice)Mailbox was full.

Feb 8, 2023, at 2:11 pm a Notice of Meeting was emailed to the parent from the district.

Feb 9, 2023, the district attempted to call the parent and allow the parent to participate in the MDR meeting by phone. No answer (voice)mailbox was full.

Feb 9, 2023, the results of the MDR were emailed to the parent.

March 2, 2023 the parent emailed the district, to inform them that the student had been released from Juvenile Detention Center in another district, and wanted to know how the school (the district) would be providing special education services while the student was extended term suspended per K.A.R. 91-40-27(a)(3).

March 6, 2023, the district called the parent. District staff were able to reach the parent's husband (student's stepfather) and discussed next steps for the student's services.

March 7, 2023, the district called the parent and discussed Project PLUS as an option for the student. The parent was informed that Spring Break began on March 10 and the student may not be able to begin services until the following week (Monday March 20, 2023).

March 8, 2023 the district emailed the parent to schedule a meeting with project PLUS staff. Requested meeting availability of the parent on either Friday March10, 2023 or during the week of March 20, 2023. No response from the parent.

March 23, 2023, the district called the parent and emailed. Left message with 3 potential meeting times.

March 23, 2023, the parent responded to email with preferred meeting time.

March 23, 2023, the district confirmed with the parent meeting on March 27, 2023, with Project PLUS staff.

March 27, 2023. The parent met with district staff and Project PLUS staff at Project PLUS campus. Team discussed Project PLUS program, outlined expectations and arranged transportation.

March 29, 2023, the student began attendance at Project PLUS.

The enrollment record and the IEP record indicated the student had been incarcerated at another district's JDC multiple times. Each time the student had returned from the other district and continued attending the district.

Applicable Regulations and Conclusions

A child with a disability who is removed from the child's current placement when the conduct in question is determined not to be a manifestation of the child's disability must continue to receive educational services as provided in 34 C.F.R. § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. (K.S.A. 72-3433(a)-(b); 34 C.F.R. 300.530(d)(1)).

In this case the student was enrolled in another district as a result of a parole violation in conjunction with expulsion from school. Upon completion of the ordered incarceration, the student was returned to the residence located within the district and the parent notified the district. Services were put in place as soon as the child was re-enrolled. Each previous instance of service at JDC indicated re-enrollment upon return suggesting that this was the standard practice of the district.

Based on the parent communication with the school indicating the student was no longer attending the district and the past pattern of placement in a juvenile detention center and subsequent re-enrollment in the district the complaint that the district did not provide special education services while the child was subject to an extended term of suspension is ***un***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.300.324(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.
    a. 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 2022-23 school year. However, the district did not reconvene the IEP team to review and revise the student's IEP, as appropriate.

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.300.324(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.
    b. Comply with the schools requirement to give 24 hours prior (written) notice of a meeting to the child's parents (K.A.R. 91-40-38(d)).
2. Within 15 calendar days of the date of this report, USD #437 USD shall:
    a. Amend the Manifestation Determination Review to indicate that the behavior in question was a failure of USD437 to implement the IEP based on the students identified lack of progress in the general educational curriculum and lack of progress on academic and behavioral goals specified in the IEP.
    b. Rescind the Extended Term Suspension assigned to the student per (34 C.F.R. 300.530(e)) and State statute (K.S.A. 72-3433(e)).
3. No later than 15 School days after the date of this report USD 437 will reconvene the IEP team, including the parents, and seek parental consent to maintain the current placement of the student.

a. The student is currently being served in a placement comparable to the IEP however, it is in a different setting. The parent indicated during the investigation that she is agreeable to this setting. Therefore, continued service in this setting is consistent with the intent of this corrective action.

4. No later than 15 School days after the date of this report, USD #437 will
    a. reconvene the IEP team, including the 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 parents, must also consider whether the student needs additional supports in order to make appropriate progress.
    b. 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.
5. 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

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Doug Tressler
Complaint Investigator

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

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(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)

23FC42 Appeal Review

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 437
Auburn Washburn Public Schools: 23FC437-005

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on March 15, 2023, by the parent, on behalf of her child, The student. In the remainder of this decision, the parent will be referred to as "the parent," and the student will be referred to as "the student." An investigation of the complaint was undertaken by complaint investigators 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 allegations, was issued on April 14, 2023. That Complaint Report concluded that there were violations of special education statutes and regulations.

Thereafter, the 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 district, the complaint report, the district's appeal and supporting documents, and the parent's response to the 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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate

investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

In their appeal, the district disagrees with the following findings:

1. "The behavioral supports in the IEP are inappropriate for the child. The frequency, scope or duration of the behavioral supports has proven insufficient to prevent behaviors that impede the learning of the child or others, and the consistent application of the child's behavioral supports has not accomplished positive changes in behavior based on the lack of anticipated progress on the 10/14/2022 and 1/2/2023 progress reports, but instead has resulted in behavior that continues to impede, or further impeded, learning for the child or others."
2. "Based on the districts lack of response to repeated documentation of insufficient progress by the child and the procedural error that denied the parent 24 hours' notice for a Manifestation Determination Review, a violation of special education statutes and regulations is substantiated for failing to implement the IEP based on lack of expected progress towards the annual goals in the child's IEP and in the general education curriculum."

ISSUE #1 – The district disagrees with the investigators finding that "the behavioral supports in the IEP are inappropriate for the child. The frequency, scope or duration of the behavioral supports has proven insufficient to prevent behaviors that impede the learning of the child or others, and the consistent application of the child's behavioral supports has not accomplished positive changes in behavior based on the lack of anticipated progress on the 10/14/2022 and 1/2/2023 progress reports, but instead has resulted in behavior that continues to impede, or further impeded, learning for the child or others."

The district disagrees with the investigator's finding for two reasons. First, the district cites chronic absenteeism for the student's lack of progress. Second, the district argues that the frequency, scope, and duration of the behavioral supports was appropriate and sufficient based on the needs of the student.

1. The district argues that chronic absenteeism is the predominant factor for "lack of progress on the student's IEP goals", not the district's failure to implement the student's IEP.

The district states that it "did not have the opportunity to provide the designed frequency, scope, or duration of behavioral supports nor the opportunity to

consistently apply the student's behavioral supports in the time assessed, from 10/14/2022 to 1/2/2023." Further, the district argues that "the lack of opportunity for [the district] to provide FAPE and the designed behavioral supports for the student to access FAPE was directly impeded by [the student's] chronic absenteeism."

The district contends, and the record confirms, that the student missed 49% percent of total available instructional days between 10/1/2022 and 1/3/2023. The record indicates that a total of excused and unexcused absences, voluntarily accrued by the student, totaled 22 days and 5 hours. This left only 25 days and 1 hour of instructional time in which to assess the student's progress.

While the committee agrees that chronic absenteeism may be a factor contributing to the student's lack of progress, that alone does not excuse a district's responsibility to provide FAPE. In such as case, the district may have a duty to address the absences in the student's IEP if truancy has become a factor that is adversely affecting learning. As noted by the investigator, 34 C.F.R. 300.324(a)(2)(i) requires a district, in the case of a child whose behavior impedes the child's learning or that of others, to "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." Interviews with the investigator, and documents in the record, show that, although the district did reach out to the parent on October 26, 2022, with a "Fall Snapshot", including attendance concerns, an actual meeting to amend the IEP did not occur between 9/29/2022 and 2/9/2023. Additionally, the committee notes that the district, by its own admission, was aware of the student's chronic absenteeism and its possible effect on the student's learning, supported by the record, that showed the student missed almost half of their instructional time during Quarter 1 and Quarter 2 of the school year. However, it is relevant, and the committee does acknowledge, that at the time of the "Fall Snapshot", the student had missed only 2 days and 2 hours of instructional time (since the implementation of the student's IEP on 9/29/2022). Due to the district's awareness of the student's absenteeism, and its possible effect on the student's progress, the committee notes that the district may have had a responsibility to consider including strategies related to attendance in the student's IEP given the number of days the student missed.

However, failing to address the possible effect of truancy is not the same as failing to implement an IEP. To that end, the committee finds no indication, in the record, that the district failed to implement the student's IEP, or failed to provide services at any time in which the student was in attendance. On the contrary, the investigator found, and the record confirms that the district was implementing the IEP as written, as is indicated by the investigators finding that, "services were put in place as soon as the

child was re-enrolled. Each previous instance of service at JDC indicated re-enrollment upon return suggesting that this was the standard practice of the district."

In conclusion, the committee agrees with the district that the student's absences almost certainly led to a lack of progress toward the student's IEP goals, not the district's failure to implement the student's IEP. However, as stated above, the committee notes that, in such a case, a district may need to consider including strategies related to truancy in an IEP. Whether the district was required to consider strategies related to truancy in this student's IEP was not an issue in this complaint and was not addressed by the investigator. As a result, it is not subject to appeal. Therefore, the committee reverses investigator's finding that the student's lack of progress was due to a failure to implement the student's IEP.

2. The district argues that the investigator's finding that the frequency, scope, and duration of the behavioral supports was inappropriate and insufficient based on the needs of the student and that they impeded the learning of the child or others resulting in behavior that continues to impede, or further impeded, learning for the child or others.

In support of their argument, the district notes that "the 11th day placement or setting matched the level of service delivery and behavioral supports available in [the student's] designed IEP placement of a special day school." Further, the district states that, this placement "supported the information from the MDR and the conclusions of the multidisciplinary team when the IEP was developed, that was, the behavioral supports, accommodations, goals and resulting specialized instruction, and services were designed with the intent to ensure the student had the chance to meet challenging objectives." The district argues that with continuum of services and resources available in the student's community, the only more-restrictive placement would have been a home-based setting, which the district felt would have "only perpetuated chronic absenteeism." Finally, the district points to the Supreme Court case *Endrew F.,* noting that a school must offer an IEP that is "reasonably calculated to enable a child to make progress appropriate in the light of the child's circumstances". The district argues that it followed *Endrew F.* by offering the student "reasonably calculated goal(s) with the services, accommodations, considerations, and setting that would give the student the chance to meet challenging objective(s)" and that "in order for the student to respond to specialized instruction and behavioral supports achieving increased on task behavior and participation in planned activities…the student would need to be in attendance."

In the appeal, the district states that the student's IEP goals were designed with the student's needs and circumstances in mind, specifically "built to have high expectations in the special day setting, with transferable skills if met to a larger setting such as a public high school."

Additionally, the committee notes, and the record confirms, that the student's IEP did include numerous behavioral supports, which the school did utilize.

The committee acknowledges that the district failed to amend the student's IEP after "documentation of insufficient progress by the child." However, the committee also notes that the student's current IEP had been in place only since 9/29/2022, a total of 5.5 months at the time of this complaint, and that during that 5.5. months the student had voluntarily been absent 49% of the time. While there is nothing in the law that requires adherence to a specific timeline for when a district must review an IEP based on lack of progress, an IEP should be revised, "as appropriate, to address any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate." (34 C.F.R. 300.324(b)((ii)). Under *Endrew F.*, "the adequacy of a given IEP turns on the unique circumstances of the child from whom it was created". *Endrew F . v. Douglas County Sch. Dist*. RE-1, 69 IDELR 174 (U.S. 2017).

In this case, the committee finds, and the record confirms, that the district, as "standard practice", provided services to the student, as indicated in the student's IEP, upon the student's return to the district from the Juvenile facility, and that those services were based on the needs of the student. The district states that the services in the IEP were specifically created to allow the student to re-enter a more inclusive high-school setting, indicating that the IEP was indeed based on the needs of the student. Further, given that the student was in and out of the district, as indicated in the record, and that the student was often absent from school, also as indicated in the record, the committee finds that it may not have been appropriate to adjust the student's IEP at this time. Whether the district, given the student's unique circumstances, failed to provide the student with appropriate and sufficient behavioral supports, is subjective. The committee finds that it is just as likely that the student's lack of progress was due to the student's voluntary lack of participation in instructional time as a failure in the behavioral supports included in the IEP. Finally, nothing in the record demonstrates that the behavioral supports and goals in the student's IEP resulted in behavior that "continues to impede, or further impeded, learning for the child or others". As such, the committee will not make a determination that the district was required to amend the IEP based on "appropriateness". As addressed by the investigator, under *Endrew F.,* "the IEP is not a guarantee of a specific educational or functional result for a child."

Therefore, based on the lack of evidence in the record that the district failed to implement the student's IEP, or that the district failed to reasonably calculate the student's IEP to enable a child to make progress appropriate in the light of the child's circumstances, the committee

reverses the investigators finding that the behavioral supports were inappropriate or insufficient or that they impeded the earning of the student or others.

> ISSUE #2 – The district disagrees with the investigator's finding that "Based on the districts lack of response to repeated documentation of insufficient progress by the child and the procedural error that denied the parent 24 hours' notice for a Manifestation Determination Review, a violation of special education statutes and regulations is substantiated for failing to implement the IEP based on lack of expected progress towards the annual goals in the child's IEP and in the general education curriculum."

In the appeal, the district argues that it has "shown the reason for the insufficient progress, [and therefore the insufficient progress] cannot be determined to be a result of the failure of the IEP or provision of FAPE but instead chronic absenteeism for which the district has minimal control over". Further, the district contends that "it should be noted that while the long-term hearing did modify the suspension of 186 days, an educational placement that aligns with the current IEP was offered and is currently being provided to the student during the removal". Therefore, "despite the result of the manifestation determination, the obligation to provide services has been upheld and an actual removal is not in place." Whether the result of the manifestation determination is relevant, at this point, due to the student's current placement, is not an issue identified in the original complaint and will not be addressed by the committee. However, the committee will address whether the district's "lack of response to repeated documentation of insufficient progress" and the "procedural error that denied the parent 24 hours' notice for a Manifestation Determination Review" violated special education statutes and regulations.

As stated above, for the reasons previously discussed, the committee does not find that the district failed to implement the IEP based on a lack of expected progress toward IEP annual goals described in the student's IEP or in the general education curriculum.

Regarding the procedural violation, the investigator found that the district failed to "provide parents with prior written notice of meeting before convening meetings regarding the manifestation determination and the services to be provided during disciplinary removals." (K.A.R. 91-40-25). The committee agrees, the record confirms, and the district acknowledges, that the district *did fail* to provide the parent with 24 hours' prior written notice of the Manifestation Determination Hearing. However, a procedural violation, by itself, does not create a denial of FAPE and will not overturn a Manifestation Determination Review. Under IDEA, a procedural violation denies a student FAPE only if a) the violation impeded the child's

right to receive FAPE, b) significantly impedes the parent's opportunity to participate in the decision-making process, or c) causes a deprivation of educational benefits. (20 U.S.C. 1415(f)(3)(E)). The committee does not find that any of these situations occurred. First, the failure to provide notice did not prevent the student from receiving FAPE or cause a deprivation of educational benefits since the record shows that the student was still receiving services from the district whenever the student was in attendance. Second, the parent was not denied an opportunity to participate in the decision-making process due to the shortened notification time. In the record, the investigator notes that on:

> Feb 7, 2023, the School Psychologist for the district called the parent to inform the parent of scheduled MDR. No answer (voice)Mailbox was full.
>
> Feb 8, 2023, at 2:11 pm a Notice of Meeting was emailed to the parent from the district. K.A.R. 91-40-38(d) refers to "24-hour prior notice of a meeting..." So, only a NOM is needed. The first written notice was an e-mail at 2:11 pm on Feb. 8 and the MDR was held on Feb. 9 at an unspecified time. Presumably, the MDR was held prior to 2:11 pm on Feb 9.
>
> Feb 9, 2023, the district attempted to call the parent and allow the parent to participate in the MDR meeting by phone. No answer (voice)mailbox was full.

Since the district failed to provide 24-hour notice in writing the investigator correctly found that a procedural violation did occur. However, the record also shows that the district continuously attempted to contact the parent without success. The committee also found, and the record confirms, that the e-mail address used to send the MDR notification was the same email address the district routinely communicated with the parent through. Therefore, due to the repeated attempts by the district to contact the parent, the parent was not denied an opportunity to participate in the decision-making process. Based on the reasons listed above, the committee reverses the investigator's finding that "based on the districts lack of response to repeated documentation of insufficient progress by the child and the procedural error that denied the parent 24 hours' notice for a Manifestation Determination Review, a violation of special education statutes and regulations" occurred.

CONCLUSION

The Appeal Committee concludes that the investigator erred in finding, "the behavioral supports in the IEP are inappropriate for the child. The frequency, scope or duration of the behavioral supports has proven insufficient to prevent behaviors that impede the learning of the child or others, and the consistent application of the child's behavioral supports has not accomplished positive changes in behavior based on the lack of anticipated progress on the 10/14/2022 and 1/2/2023 progress reports, but instead has resulted in behavior that continues to impede, or further impeded, learning for the child or others."

The Appeal Committee concludes that the investigator erred in finding, that "based on the districts lack of response to repeated documentation of insufficient progress by the child and the procedural error that denied the parent 24 hours' notice for a Manifestation Determination Review, a violation of special education statutes and regulations is substantiated for failing to implement the IEP based on lack of expected progress towards the annual goals in the child's IEP and in the general education curriculum."

For the reasons stated above, the committee overturns the investigators following conclusion, that "the district did not reconvene the IEP team to review and revise the student's IEP, as appropriate" and removes the requirements in the report for the following corrective action:

1. Requirement for the district to "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".
2. Requirement that the district must "amend the Manifestation Determination Review to indicate that the behavior in question was a failure of USD437 to implement the IEP based on the students identified lack of progress in the general educational curriculum and lack of progress on academic and behavioral goals specified in the IEP".
3. Requirement that the district "rescind the Extended Term Suspension assigned to the student per (34 C.F.R. 300.530(e)) and State statute (K.S.A. 72-3433(e))".
4. Requirement that "no later than 15 School days after the date of this report USD 437 will reconvene the IEP team, including the parents, and seek parental consent to maintain the current placement of the student.
5. Requirement of the district to "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.

The Appeal Committee sustains the corrective action requiring the district to submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:

1. Comply with the school's requirement to give 24 hours prior (written) notice of a meeting to the child's parents (K.A.R. 91-40-38(d)).

In all other respects, the report is sustained.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 14th day in May, 2023.

APPEAL COMMITTEE:

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Mark Ward: Attorney, Special Education and Title Services,

Crista Grimwood: Education Program Consultant.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #259
ON APRIL 13, 2023

DATE OF REPORT MAY 15, 2023

This report is in response to a complaint filed with our office on behalf of the student by her parents, The parents. In the remainder of the report, the student will be referred to as "the student." The parents are the student's parents and in the remainder of this report The father will be referred to as "the father" and The mother will be referred to as "the mother." Collectively they will be referred to as "the parents" or "the complainants."

The complaint is against USD #259 (Wichita Public Schools) that provides general and special education to students in this district and are the responsible agency for both services. In the remainder of the report, "school" or "district" may be named, but in all cases shall refer to the responsible agency, USD #259, Wichita Public Schools.

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 13, 2023 and the 30-day timeline ends on May 15, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator initially interviewed the parents by telephone on April 18, 2023. Additionally, the Complaint Investigator exchanged emails, texts, and phone calls and messages with the mother between April 13, 2023 - May 7, 2023.

The Complaint Investigator exchanged emails with Dr. Erica Shores, Special Education Director between April 13, 2023 through May 5, 2023 to gather additional information and to clarify documentation provided by the district.

USD #259 staff, Dr. Erica Shores, Special Education Director, Mr. Myron Fisher, Assistant Principal, Heights High School, and Ms. Melissa Neal-McFarthing, Assistant Principal,

Heights High School participated in a conference call interview with the Complaint Investigator on May 5, 2023.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the district. The following materials submitted were carefully read and used in consideration of the issue. They include:

Individualized Education Program (IEP) including Behavior Intervention Plan (BIP), dated October 19, 2021

Special Education Student Contact Logs (Two submitted) dated inclusive of August 12, 2022 through April 23, 2023

USD 259 Electronic Log documenting date and time of parent sign off of the following district policies on August 22, 2022 between 10:57 a.m. – 11:00 a.m.: P1465 Controlled Substances, Student Technology Sign-Off, P1462 Assault and Battery of a Staff Member, P1230 Acceptable Device and Communication Use by Student, P1466 Possession or Use of Weapons, P1230a Acceptable Use of Technology – Student Access

September 13, 2022 Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent, father signed consent September 13, 2022

Multidisciplinary Team Report (MTR) dated October 11, 2022

Individualized Education Program (IEP) including Behavior Intervention Plan (BIP), Meeting Notes, dated October 11, 2022

Prior Written Notice for the October 11, 2022 IEP meeting with consent provided by mother on October 25, 2022

Incident report dated October 25, 2022 at 1:20 p.m. with location of C108. Report lists Antecedent, Behavior and Injuries

Emails between Ms. Melissa Neal-McFarthing, Vice Principal, Heights High School and mother dated between October 26, 2022 at 6:38 p.m. – October 27, 2022 1:02 p.m.

Incident report dated December 12, 2022 at 10:20 p.m. with location of C108. Report lists Antecedent, Behavior, Quick Glance of Behaviors, and Injuries submitted by Ms. Andrea Adams, Categorical/Mixed Ability Teacher, Heights High School and Ms. Bre'Gail Evans, Applied Academics, Heights High School on December 12, 2022

Emails between Ms. Neal-McFarthing and parents dated between December 12, 2022 at 9:25 and December 13, 2022 at 4:53 p.m.

Emails between Ms. Adams and parents dated December 14, 2022 at 2:53 p.m. and December 15, 2022 at 1:58 p.m.

Emails between Ms. Shayla Hoefgen, Psychologist, Heights High School and parents dated December 15, 2022 at 2:38 p.m. and 6:57 p.m.

Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated January 13, 2023. Consent signed by mother on January 13, 2023

Student Safety Plan, dated January 23, 2023

IEP & 504 Team Meeting Notes dated February 7, 2023

Functional Behavior Assessment (FBA), dated February 15, 2023

Individualized Education Program (IEP) including Behavior Intervention Plan (BIP) and Meeting Notes, dated March 27, 2023

Incident Report sent to mother, dated April 12, 2023 at 1:40 p.m.

Letter from Mr. Myron Fisher, Assistant Principal, Heights High School to parents and student dated April 13, 2023

Emails between Mr. Fisher and parents dated April 12, 2023 at 5:52 p.m. and April 13, 2023 at 12:12 p.m.

Student Discipline Profile for 2022 – 2023 School Year with dates of disposition as October 25, 2022 and April 12, 2023

Emails between Mr. Fisher and parents dated April 18, 2023 at 6:54 p.m. and April 19, 2023 at 11:04 p.m.

USD 259 Response to 23FC259-009 received by Complaint Investigator on April 26, 2023

USD 259 P1462 Student Behavior– Assault and/or Battery of Staff Member Board Policy

USD 259 P1464 Student Behavior– Regulations Board Policy

Background Information

This investigation involves an 18-year-old twelfth grader who receives special education services through IDEA as a child with an Intellectual Disability and Autism. The student became eligible for services as a child with Developmental Delays prior to Kindergarten. The student has goals in behavior, social, reading, writing and math and uses accommodations for participating in both general and special education classes. In the past she participated in the Alternate Assessment and receives a part of her education through a modified curriculum that follows the DLM Essential Elements. She has a behavior intervention plan (BIP) and transition plan in her IEP. She was reevaluated for special education services on October 11, 2022 and her functional behavior assessment updated in February 2023.

Issue

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. In this case the issue addressed only the current school year.

Issue One

> ISSUE ONE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the student FAPE by not implementing the behavior intervention plan resulting in incorrectly assigning the student to out-of-school suspension.

Positions of the Parties

The family alleged that their student was suspended from school for reasons that were not legal, and in violation of her receiving a free and appropriate education. She had a behavior plan and an IEP in place that were supposed to help her not escalate to the point of being suspended. Her behaviors were expected and included on the BIP and the BIP included opportunities to clean up the room. She was suspended out of school one day in April for what the assistant principal stated, “to give the staff a chance to compose themselves, recuperate, and give them a chance to clean up the room.” The

family requested she receive in-school suspension instead and the assistant principal stated that ISS is not set up to accommodate someone with special needs like the student. The family objected stating that Out-of-School Suspension "reinforces " her desire to be at home." After the incident, the parents received an incident report stating she assaulted a staff member although on the phone immediately after the incident the assistant principal had stated that no one was harmed.

USD #259 responded that they provided the student FAPE by implementing the student's behavior intervention plan and the student was correctly assigned out-of-school suspensions according to the district's board policies. The district stated that the student was first a general education student and entitled to be treated as such and thus afforded general education provisions (including school discipline) where they did not infringe upon her rights under special education laws. This Student had an IEP with a behavior intervention plan (BIP) that addressed her behaviors and was updated throughout this school year to adjust based on additional evaluation and functional behavior assessment. Nowhere in the Student's IEP, nor meeting notes did it include any language stating that suspensions may not be utilized as a regular disciplinary measure when warranted.

The Student has been suspended out of school (OSS) a total of five days during the 2022-2023 school year - October 25, 26, and 27, 2022, December 12, 2022 and April 13, 2023 for district policy violations in spite of following the IEP, BIP and Student Safety Plan. Administration believed the Student's behavior warranted OSS and followed the appropriate steps to do so.

Findings of the Investigation

Documentation provided by the parent and district showed the student had a Behavior Intervention Plan in place for the entire 2022-2023 school year addressing verbal aggression, physical aggression and acting out as noted on the October 19, 2021; October 11, 2022; and March 27, 2023 IEPs. None of the BIPs indicated the student would not be subject to in-school-suspension (ISS) or out-of-school-suspension (OSS). Additionally, all IEPs listed, after de-escalation, "if applicable, encourage the student to clean up any messes made and make things right with others involved so that she feels as though she can correct her mistakes."

Documentation provided by the district and parents showed the Behavior Intervention Plan was revised on October 11, 2022 during her reevaluation and annual IEP, and again, March 27, 2023 based on a parent requested Functional Behavior Assessment.

Documentation showed that a parent signed the annual district required policy statement informing of disciplinary action that can be taken if a student is found in violation on August 22, 2022.

USD 259 Board Policy P1462 defined battery as "the unlawful intentional touching or application of force to the person of another when done in a rude, insolent, or angry manner" and assault as "the unlawful, intentional threat or attempt to do bodily harm to the person of another coupled with the apparent ability to do bodily harm and resulting in the immediate placement of a person in fear of bodily harm. No bodily contact is necessary."

USD 259 Board Policy P1464 stated "All students are held responsible for their personal actions. The right to attend a district school carries with it the obligation to maintain acceptable behavior. Rules and regulations apply to all students attending school functions held on school grounds, in school buildings, school vehicles, or at a school-sponsored activity or event, or at other facilities and while utilizing school property. Violations of the rules and regulations may be subject to disciplinary action and reported to local law enforcement, if appropriate."

Documentation showed the student was suspended out of school three times during the 2022-2023 school year totaling five days. She was suspended October 25-27, 2022 for Physical Assault (including Battery) on staff; December 12, 2022 for Acting out (as defined in her BIP); and April 13, 2023 for Physical Assault (including Battery) on staff. It is noted that in the records that the student's father was called to pick up the student following an accident and while this was not an official suspension as defined in board policy it counted as a day of OSS.

The following calls are recorded in the Student Log about behaviors.

Date	Time	Person reached	Message/comment
10/25/2022	1:38 p.m.	Mother	Physical Battery Report
10/25/2022	6:05 p.m.	Mother	Request to keep student home - suspension
12/12/2022	10:45 a.m.	Father	Request parent pick up after incident
3/24/2023	12:17 p.m.	Mother	Classroom incident

In an email from the mother to a Vice Principal in October 2022 she wrote, "my husband just told me that you want our child to stay home tomorrow. Partly because one of the teachers is sick. We will hold you to what you said yesterday that you will NOT make her stay home everytime there is a sub. We are (somewhat reluctantly) ok with tomorrow,

but what if one of the teachers is out sick for a week or so? The longer our child stays home the more time she has to think "hmmm. I get to sleep in. I get to draw all day. I don't have to do school work. Maybe I should throw a fit more often...We understand that you have to keep teachers and students safe, but you also have to provide education for our child, by law."

A December 15, 2022 email from the parent to the school psychologist, copying the principal indicated that they wanted to request an FBA to "work on getting a behavior plan in place that will deal with things like {behavior} but not being suspended. We think she needs to clean {up from the behavior} and stay in school."

Documentation provided by the district showed the student had a safety plan in place effective January 2023. The reason for the plan listed, "physical aggression towards herself and others (scratching, hitting, throwing objects, grabbing others, nonverbal gestures with her middle or ring finger, and kicking), acting out in inappropriate ways (touching herself and others, inappropriate language and removing her clothes)." No mention is made of assignment to ISS or OSS.

Meeting Notes from a February 7, 2023 IEP meeting reported, "parents relayed that they were not happy that she was suspended in December for {behavior}. Staff relayed that the incident was larger than just {behavior}. With consent, the report was pulled up and read out loud to attendees. The incident was on 12/12/22 and involved aggressive and vulgar behavior that warranted sending her home. Her parents said that they only knew about the {behavior} said that they don't want her sent home at all because there is nobody home and then they have to leave work. It was explained that the administration has 10 days to use at their discretion before having to call an MDR meeting. So they are reserved for major events. The staff assured the parents that we want to help the student with her behavior and are mindful of what students will try to do to get what they want like going home."

The February 15, 2023 Functional Behavior Assessment does not mention the use of ISS or OSS.

In an email dated April 12, 2023 following the phone conversation documented in the student log from Mr. Fisher at 2:15 the mother asked Mr. Fisher at 5:52 p.m. "Just to clarify our conversation on the phone today as well as the conversation you had on the phone with my husband. Our understanding is that the student is not allowed to come to school on Thursday 4/13/23 because the staff needs time to cool down and compose themselves after the student's behavior today and to allow staff time to clean the room

and computers. Furthermore, our understanding is that no one was physically harmed by the student's behavior." The parents reported that that they never received a response when they questioned the vice principal about the suspension being about staff needs, rather than a suspension based on the student behavior. When the Complaint Investigator asked for clarification of this statement the district responded that the student was suspended for behavior that met the criteria of Board Policy 5113.

The letter from the vice principal dated April 13, 2023 listed the student's suspension for Assault – Physical (including Battery) on Staff, describing the student as "hitting and swatting at both officers and teacher. She worked her way to the back of the room, grabbed the touch screen monitor off the table and tried to yank it off the table and throw it. This conduct constitutes behavior that violates paragraphs a, b, and c, of Kansas State Statute 72-6114, and applicable Board of Education Policy P1464 – Pupil Behavior Board of Education Policy P5113 – Suspension and/or Expulsion of Pupils at the High School, and causes a disruption to the academic progress and poses a danger and/or impinges or invades the rights of others at the High School."

An email from the vice principal on April 19 sent to the parents in response to the parents inquiring the number of days suspended and requesting an official copy of the incident report indicated,

> Last Thursday a signed suspension letter was sent in the mail to the address we have on file that summarized the incident, as that is my procedure for any student that is assigned Out of School Suspension. I have attached a copy of that letter to this email. I sent the teacher's statement (word document) to give a full account of what took place and to show that all plans had been followed.
>
> The student has received Out of School Suspension for a total of four (4) days. I have attached her discipline profile as evidence. The discipline profile accounts for three (3) Out of School Suspension days for formal write-ups, but we err on the side of caution as to not legally go over the 10 days, and are including when the vice principal asked you to pick the student up on December 12th as one of the days as well.

The district administrative staff reported that the assignment to OSS and ISS and number of days is made at the discretion of the administration. They reported that the first suspension in October was the most severe and resulted in three days of OSS while the incident in April was similar but less severe so resulted in only one day. They described the incident in December as acting out so was for the partial day. They stated

that the student is first a student of the district and subject to the same rules as a student in general education as long as they consider the student's special education and IEP. In all three cases they reiterated that the suspensions were warranted, not representing a pattern of behavior, or exceeding ten days to consider a change of placement.

Applicable Regulations and Conclusions

Federal law at 34 C.F.R. 300.530(b) and K.S.A. 72-6115(a) stipulates that school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to suspension, for not more than 10 consecutive school days before providing services to enable the child to continue to participate in the general education curriculum, and progress toward meeting the goals set out in the child's IEP. Federal law at 34 C.F.R.300.530)d)(3) states that a school is "only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed".

Since USD 259 does not provide services to general education students assigned OSS for 10 school days or less the district was under no obligation to provide those services during the five days of OSS the student served.

It is found that each of the three behavior intervention plans during the 2022-2023 school year was implemented correctly as written. It is found that the parents requested special education actions such as additional evaluation, functional behavior assessment and revised behavior intervention plans to avoid OSS for the student due to the reinforcing nature of OSS for the student. It is found that the parents were not made aware that finetuning the BIP, interventions and education to increase the chances of appropriate behaviors would not preclude the use of suspensions based on the number of times during the school year they expressed this concern.

According to the July 2022 guidance document from the U.S. Department of Education Office for Civil Rights, titled, Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 "it may be necessary for a school in some situations to treat a student with a disability differently when implementing discipline because the behavior giving rise to the violation of a school rule is based on their disability" and may in fact deny the student FAPE. "However, when the student with a disability and the student without a

disability exhibit the same or comparable behavior in violation of school policy, the school generally may discipline the students in the same manner."

While the family requested ISS in lieu of OSS for the student's behaviors, out-of-school suspension was correctly assigned when applying district policies and allowed according to the IDEA. It is important to note that at no point did the parents ever report they received the information that the improvements made to the BIP and FBA would not preclude their child from being suspended. While the district was correct and followed their discipline policies, the administrative decision-making processes were not well-explained to the family and resulted in the parents questioning the validity of the assignment of OSS for their student's behaviors. As well, the parents were not made aware of the distinctions in assigning suspensions for students in special education. The district and family are commended for continuing to refine the FBA and BIP to address the student's behavior. It is recommended that as the student moves forward in her education the IEP team discuss and determine the role of removal given her behavior function for escape in conjunction with district policies and IDEA regulations so all team members are clear and understand consequences.

Based on the foregoing, it is *not* substantiated that USD #259 failed to provide the student FAPE by not implementing the behavior intervention plan resulting in incorrectly assigning the student to out-of-school suspension.

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. 91-40-51(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 #497
ON APRIL 17, 2023

DATE OF REPORT MAY 24, 2023

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

The complaint is against USD #497 (Lawrence Public Schools). In the remainder of the report, "USD #497," 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 and USD #497 received the complaint on April 17, 2023 and the timeline to investigate the allegations was extended by seven days due to the illness of the investigator.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on May 11, 2023 as part of the investigative process.

USD #497 made the following school district staff available for a telephone interview on May 10, 2023:

Dr. Andy Taylor, Principal of Billy Mills School
Lori Stithem, Assistant Director of Special Education

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. While all of these documents were used to provided background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Behavior Logs dated between August 23, 2022 and January 6, 2023
- Email dated November 15, 2022 at 4:19 p.m. written by the parent to Kady Carson , Assistant Principal at Billy Mills Middle School, and Rebecca Byers, Guidance Counselor at Billy Mills Middle School
- Email dated November 16, 2022 at 2:52 p.m. written by Ms. Byers to the parent
- Email dated December 6, 2022 at 7:55 p.m. written by Dallas Winrod, School Psychologist to the parent
- Email dated December 6, 2022 at 9:06 p.m. written by the parent to Mr. Winrod
- Emails dated December 7, 2022 at 8:38 a.m., 9:35 a.m. and 1:13 p.m. between the parent and Mr. Winrod
- Psychological Evaluation dated December 5-16, 2022 completed by Kevin R. Piske, Ph.D, Clinical Psychologist at Spence Counseling in Lawrence, Kansas
- Prior Written Notice (PWN) for Evaluation or Reevaluation dated January 5, 2023
- Email dated January 9, 2023 at 11:22 a.m. written by the parent to Lori Stithem, Assistant Director of Special Education
- Middle School Tier 3 Discipline Matrix for Lawrence Public Schools
- Email dated January 13, 2023 at 10:08 a.m. written by Ms. Carson to the parent
- Notes from the January 17, 2023 Manifestation Determination Meeting created by USD #497
- Letters dated January 17, 2023 written to the parent and the student scheduling an expulsion hearing for January 23, 2023
- Suspension/Expulsion Hearing Packet of Information dated January 23, 2023
- PWN for Evaluation or Reevaluation dated January 24, 2023,
- Email exchange dated February 7, 2023 between the parent, Mr. Winrod, and Ms. Stithem
- Email exchange dated February 8, 2023 between the parent and Ms. Stithem
- Formal Complaint Request Form dated April 17, 2023 written by the parent
- Email dated April 18, 2026 at 8:20 a.m. written by Crista Grimwood, Education Program Consultant and Dispute Resolution Coordinator at the KSDE, to the parent
- Evaluation Team Report dated April 26, 2023
- April 26, 2023 Initial Evaluation Meeting Notes created by USD #497
- 2022-23 School Year Calendar for USD #497
- USD #497 website at https://www.usd497.org/
- Response to the Allegations dated May 1, 2023 written by Lori Stithem, Assistant Director of Special Education for USD #497

Background Information

This investigation involves a twelve-year-old female student who is enrolled in the sixth grade in USD #497. The student attended Billy Mills Middle School at the beginning of the 2022-23 school year. The student was homeschooled for the fifth grade and attended Broken Arrow Elementary school in USD #497 beginning in the first grade. The student has never been referred or identified as needing a Section 504 Accommodation Plan or an Individualized Education Program prior to 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, the parent raised four issues that were investigated.

> ISSUE ONE: The USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with a copy of the Procedural Safeguards during the 2022-23 school year.

Positions of the Parties

The parent reported that USD #497 did not provide her with a copy of the IDEA Procedural Safeguards Notice at the appropriate times during the 2022-3 school year. She indicated she did not receive a copy upon her request for an initial evaluation for special education eligibility on November 15, 2022 nor when she specifically requested a copy on January 9, 2023. The parent reported she received a copy of *the Parent Rights in Special Education (Procedural Safeguards)* from the KSDE on April 18, 2023 when she filed this child complaint. She indicated USD #497 did not provide her with a copy of her parent rights until April 26, 2023 at the evaluation determination meeting.

USD #497 acknowledged that the parent was not provided with a copy of the IDEA Procedural Safeguards in a timely manner during the 2022-23 school year. The district reported,

In our investigation of this matter, we believe this to be an isolated incident related to the late hiring of a second remote school psychologist for Billy Mills Middle School in late September. Our procedure manual clearly states that the psychologist or speech language pathologist (SLP) are to provide a copy of parent rights upon parent request for an evaluation and document this in our special education program. The current remote psychologist has shared that he has not reviewed our district procedural manual. In the future to prevent this procedural error, all onboarding of remote SLPs and Psychologists will include a review of the provision of procedural rights. This will continue to be reviewed at the beginning of the year with all special education staff.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #497.

It is noted that the IDEA procedural safeguards notice is titled *Parent Rights in Special Education (Procedural Safeguards)* in Kansas.

Pages 3-4 of the USD #497 Procedural Manual states that a copy of the Parent Rights are to be provided to both of the student's parents or legal education decision-maker and the student if aged 18 or older in their native language or other mode of communication used by the parents/adult student in the following instances:

1. One time each school year
2. Upon initial referral or parent request for evaluation
3. Upon request of the first state complaint/due process in a school year
4. On the date the decision is made to make a disciplinary change of placement
5. Upon request by the parent

The parent sent an email to Kady Carson, Assistant Principal at Billy Mills Middle School, and Rebecca Byers, Guidance Counselor at Billy Mills Middle School, on November 15, 2022 at 4:19 p.m. requesting "an evaluation for an IEP." Ms. Byers responded via email to the parent on November 16, 2022 at 2:52 p.m. stating that she would "pass the request along to the IEP team."

A Prior Written Notice requesting consent for an initial evaluation was sent to the parent on January 5, 2023. This notice includes the following statement,

> You received a copy of your rights when the initial referral for evaluation was made. A copy of your rights is provided to you upon and request, and at least once a year in the native language of the home. You should carefully read them, and, if you have any questions regarding your rights of if you wish to receive an additional copy of your rights, you may contact the special education director.

The parent sent an email to Lori Stithem, Assistant Director of Special Education, on January 9, 2023 at 11:22 a.m. stating,

> At the end it does say I was provided with a copy of my rights when the initial request was made. I do not believe I was given anything like that. Can I get a copy of that?

USD #497 indicated the student had a disciplinary incident on January 6, 2023. The district stated,

> The student was given a 10 day out of school suspension beginning on January 9, 2023, for targeting and threatening a peer. An expulsion through the end of the 22-23 school year was being recommended pending a manifestation determination review for the suspected disability and the expulsion hearing. A meeting was held on January 17, 2023, to review the student behavior resulting in suspension to determine if the behavior was a manifestation of the student's suspected disability. The team determined that the behavior in question was not a manifestation of the student's suspected disability, therefore the expulsion hearing was held on January 23, 2023. The hearing committee and hearing officer accepted the recommendation from the Billy Mills administrative team, therefore the student was long-term suspended through the end of the 22-23 school year. During the long term suspension, the student attended the district's suspension alternative program to continue to make progress in her curriculum and to continue the special education evaluation.

An email dated April 18, 2023 written by Crista Grimwood, Education Program Consultant and Dispute Resolution Coordinator at the KSDE, to the parent included the *Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards)* as an attachment.

The parent reported that USD #497 provided a hard copy of the *Parent Rights in Special Education (Procedural Safeguards)* at the Eligibility Determination Meeting held on April 26, 2023.

Both the English and Spanish versions of the *Parent Rights in Special Education (Procedural Safeguards)* can be located on the USD #497 website under the "Parent and Students" tab, under the "Special Education" tab, under the "Resources" tab.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300. 300.504 (a) require school districts to give a copy of the procedural safeguards available to parents of a child with a disability at least one time per school year. In addition, school districts must also give a copy to the parents in the following situations:

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first State complaint and upon the receipt of the first due process complaint in a school year;
3. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct in accordance with the discipline procedures in 300.530(h); and
4. Upon request by a parent.

USD #497 acknowledged that a copy of the procedural safeguards notice was not provided to the parent upon the initial request for a special education evaluation on November 15, 2022. An internal investigation concluded this was an isolated instance related to the late hiring of a remote school psychologist and the district developed the following plan to address the noncompliance:

> In the future to prevent this procedural error, all onboarding of remote SLPs and Psychologists will include a review of the provision of procedural rights. This will continue to be reviewed at the beginning of the year with all special education staff.

The parent made the child complaint to the KSDE on April 17, 2023. Interviews and documentation showed the KSDE did provide the parent with an electronic version of the parent rights notice on April 18, 2023.

On January 23, 2023, the district made the decision to expel the student for a disciplinary incident. A manifestation determination hearing was held on January 17, 2023 and it was determined that the behavior resulting in the disciplinary action was not a manifestation of her suspected disability. The student's current placement at the time of the expulsion was in the general education setting 100% of the time. As a result of

the disciplinary action, her building assignment changed from the Billy Mills Middle School to the district's suspension alternative program. Both of these programs are considered general educational settings.

The parent sent an email to the Assistant Director of Special Education on January 9, 2023 requesting a copy as explained in the January 5, 2023 PWN for Evaluation or Reevaluation; however, a copy of the *Parent Rights in Special Education (Procedural Safeguards)* was not provided to the parent by the district until the eligibility determination meeting held on April 26, 2023.

Federal regulations at 34 C.F.R. 300. 300.504 (b) allow a public agency to place a current copy of the procedural safeguards notice on its Internet Web site. It is noted that USD #497 is complying with this regulation by posting a current copy of the procedural safeguards notice on the district's website.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to comply with federal regulations at 34 C.F.R. 300. 300.504 (a) which required that the parent be provided a copy of the procedural safeguards notice upon the following dates/situations:

1. November 15, 2023 (initial referral or parent request for evaluation); and
2. January 9, 2023 (upon request by a parent).

ISSUE TWO: The USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to the parent's request for an initial special education evaluation on November 15, 2022.

Positions of the Parties

The parent reported that she made an initial request for a special education evaluation in writing to Kady Carson, Assistant Principal at Billy Mills Middle School, and Rebecca Byers, Guidance Counselor at Billy Mills Middle School, on November 15, 2022. The parent understood that the district had 15 days to respond; however, she was not provided with a Prior Written Notice (PWN) for an Evaluation or Reevaluation until January 5, 2023.

The parent reports the district further delayed the special education evaluation of the student by failing to initially include behavior as an area requiring additional assessment and issuing a second PWN and requesting consent on January 24, 2023.

The parent reported she was provided with a third PWN on February 7, 2023 requesting consent to evaluate in all academic areas rather than just math which was the parent's main academic concern.

The parent believes the delay in the special education evaluation created the circumstances which ultimately resulted in the student being expelled from Billy Mills Middle School on January 23, 2023.

USD #497 acknowledged that the request was provided to the parent 18 school days after the initial request, rather than the 15 school days. The district explained the short delay was necessary to allow the school psychologist to determine whether or not the district's proposed assessment would duplicate any of the testing being completed as part of the parent's outside evaluation of the student. The district noted that the short delay did not impact the decision to long-term suspend the student on January 23, 2023 because the district held a manifestation determination meeting on January 17, 2023 and determined that the behavior that resulted in the disciplinary action was not related to the student's suspected disability. The district noted that the second PWN dated January 24, 2023 was provided to add an area to be evaluated and the February 7, 2023 PWN was to clarify that all areas of academics would be assessed not just the area of math.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #497.

The findings of Issue One are incorporated herein by reference.

The 2022-23 Lawrence Public Schools Calendar shows school was in session for a total of 20 days between November 15, 2022 and January 5, 2023.

The district stated,

> There was a discussion between the school psychologist and the parent related to which areas should be assessed, based on the parent's report of an outside

> evaluation being completed. The school psychologist reached out to the parent on December 6, 2022 (11 school days after the initial parent request on November 15, 2022). [This would be Day 10 following the parent referral per the investigator's calendar review] Because the parent had shared that she was having an outside evaluation completed for her daughter, the school psychologist attempted to get information about this outside evaluation in order to ensure that duplicate testing was not being completed. The parent was sent a consent for an initial evaluation on January 5, 2023 and the parent signed this on January 9, 2023.

An email dated December 6, 2022 at 7:55 p.m. written by Dallas Winrod, School Psychologist, to the parent requested information about the parent's concerns and their impact on her academically. The mother responded that same date at 9:06 p.m. stating,

> I am concerned about her ability in math. Also her behavior is a huge concern that is negatively impacting her academically. She is currently being evaluated for ADHD [Attention Deficit Hyperactivity Disorder], ODD [Oppositional Defiant Disorder] and other disorders.

On December 7, 2022, Mr. Winrod and the parent exchanged several emails regarding the need to coordinate the outside evaluation. Mr. Winrod stated,

> Can you provide me with more information about the evaluation she is currently under? I ask because the disorders you mentioned, along with others - are the same ones I would evaluate for. I can use the same tools Dr.'s use but I cannot do it all at the same time because we might impact each other's results.

The PWN for Evaluation or Reevaluation dated January 5, 2023 proposed to conduct an initial evaluation in the area of academic performance. The notice stated,

> May include assessment of academic or preacademic skills and achievement levels in relation to the general curriculum such as oral or written expression, reading skills or comprehension, mathematical calculation or reason.

The parent provided written consent for this proposed evaluation on January 9, 2023.

The parent indicated that she questioned members of the team about the lack of testing in the area of behavior at the disciplinary hearing on January 17, 2023. She was

informed the area of behavior would be added as needing further assessment and another PWN would be sent.

The parent was provided with a PWN for Evaluation or Reevaluation dated January 24, 2023 proposing to conduct an initial evaluation of the student and adding additional assessment in the area of behavior. The parent signed this form on January 25, 2023 granting consent for the additional area to be assessed.

According to an email exchange between the parent, Ms. Stitem, and Mr. Winrod, USD #497 provided a third PWN for Evaluation or Reevaluation dated February 7, 2023 to the parent in an effort to clarify that all areas of academics would be assessed, not just the area of math which was the parent's primary concern.

Interviews and documentation found that an eligibility determination meeting was held on April 26, 2023 which is 66 school days from the original date the parent provided written consent for the evaluation. The multidisciplinary team determined the student was a student with a disability; however, they were unable to determine the educational impact and need for special education and related services at that time because the student was attending the suspension alternative program at East Heights Alternative School throughout the entire evaluation process and not in a typical middle school setting. The LEA and the parent agreed to extend the evaluation and returned the student to West Middle School in USD #497 beginning May 1, 2023.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 300.301(b) allow the parent of the child to make a referral for a special education evaluation.

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.

Federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1-2) require that an IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on 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. 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.

Following the review of existing data, 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 an evaluation of a child who has or is suspected of having a disability under the IDEA.

According to Chapter 2, Section E of *The Kansas Special Education Process Manual and the Parent Guide to Special Education in Kansas*, the school must respond to the parent request for an initial evaluation within a reasonable period of time, which has been interpreted by the Kansas State Department of Education (KSDE) as being no more than 15 school days, unless there are unusual circumstances.

Once written consent for the proposed initial evaluation is received by the school district, the agency has 60 school days to complete the evaluation and determine eligibility as required by state regulations at K.A.R. 91-040-8(f). Only three specific instances justify an extension to the 60 school-day timeline: 1) the parent of the child repeatedly fails or refuses to produce the child for the evaluation; or 2) the child enrolls in a new district after the evaluation has begun and before the determination of eligibility; or 3) the parent consents in writing to extend the timeline.

In this case, documentation and interviews show the parent made the initial request for a special education evaluation on November 15, 2022 via email. The district initially responded to the request on November 16, 2022 by notifying the student's IEP team.

On December 6, 2022, the school psychologist contacted the parent to discuss the outside evaluation and to obtain her input. Emails dated December 7, 2023 were exchanged between the parent and the school psychologist regarding the need to coordinate the assessments used in outside evaluation with those being chosen for the district evaluation. Through these emails, the parent conferred with the school psychologist and shared that her concerns were specifically related to academic performance and behavior. The parent also shared the student was currently being evaluated for ADHD, ODD, and other disorders.

Despite sharing these concerns, PWN for an Evaluation or Reevaluation dated January 5, 2023 only proposed to conduct an initial evaluation in the area of academic

performance. It is noted this response is 20 days from the date of the parent request for an evaluation. While the district did initially exceed the 15 school day timeline to respond to the parent's request, the need to ensure testing was valid and reliable by not duplicating assessments would be considered an "unusual circumstance" and be a reason for the additional 5 days in the timeline.

The parent again shared her concern that behavior was also an area of potential disability and that additional assessment was needed in order to determine eligibility while the student was long term suspended from the district due to a disciplinary incident on January 6, 2023. USD #497 provided a second PWN for initial evaluation to include both academics and behavior to the parent on January 24, 2023. The parent granted written consent to add the additional area of behavior to the special education evaluation on January 25, 2023.

It is noted that the final PWN provided to the parent in February 2023 was not necessary as the parent had already provided written consent to test in the area of academic performance.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to respond appropriately to the parent's request for an initial special education evaluation on November 15, 2022. Specifically, USD #497 failed to include the parent's concerns regarding behavior in the PWN for Evaluation or Reevaluation dated January 5, 2023. This resulted in the district not proposing a comprehensive evaluation of the student to determine eligibility. In addition, USD #497 exceeded the original 60 school day timeline to complete the evaluation without experiencing one of the specific instances that allow for an extension of that timeline.

It is noted that USD #497 did follow the appropriate procedure and got obtained written permission from the parent to extend the evaluation timeline in order to gather additional information regarding the need for special education and related services following the April 26, 2023 meeting.

ISSUE THREE: The USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate disciplinary procedures for a student who was suspected of having a disability and in need of special education services during the 2022-23 school year.

Positions of the Parties

The parents reported the student was suspended from school a total of 21 days after her parent referral for a special education evaluation of the student on November 15, 2022. The parent indicated that USD #497 then expelled the student from school on January 23, 2023 for behavior that parent believes is a result of the student's disability.

USD #497 reported that the student displayed behaviors that significantly disrupted the learning environment of other students at Billy Mills Middle School through classroom disruptions and disrespect to staff during the first semester of the 2022-23 school year. The district noted that the student was suspended for 10 days with a recommendation for a long term suspension following a disciplinary incident on January 6, 2023 for classroom disruption, disrespect to staff, and threatening a peer. A manifestation determination hearing was held on January 17, 2023 and it was determined that the behavior resulting in the violation of the code of conduct was not a manifestation of the student's suspected disability. A hearing on January 23, 2023 resulted in the student being long term suspended from USD #497 and being reassigned to attend the suspension alternative program at East Heights Alternative School for the remainder of the 2022-23 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 #497.

The findings of Issue One and Two are incorporated herein by reference.

Interviews and documentation show the student was suspended out of school for a total of 21 days after the parent requested a special education evaluation on November 15, 2022. The list below shows the date of the suspension, the infraction to the code of conduct, and the number of days suspended as the disciplinary consequence:

- November 16 and 17, 2022 for class disruption (2 days)

- November 18, 2022 for class disruption and disrespect to staff (1 day)
- November 19 and 20, 2022 for class disruption and disrespect to staff (2 days)
- November 30 and December 1and2, 2022 for class disruption and disrespect to staff (3 days)
- December 15, 2022 for class disruption and disrespect to staff (1 day)
- December 19 and 20, 2022 for class disruption and disrespect to staff (2 days)
- January 9 through January 23, 2023 for class disruption, disrespect to staff, and threatening another student (10 days)

The Assistant Principal at Billy Mills Middle School sent an email to the parent on January 13, 2023 at 10:08 a.m. stating,

> I sent out an invite for the meeting on Tuesday afternoon at 3:45 p.m. to discuss the student's suspected disability as it relates to her behavior. Lori Stithem did tell me that we would need as much information about the student's outside evaluation as possible.

The notes from the January 17, 2023 meeting indicate that the purpose of the meeting was to determine if the student's behaviors on January 6, 2023 of threatening a peer, classroom disruptions, and disrespect to the staff were a manifestation of the student's suspected disability.

The parent reported and the district acknowledged that the parent shared a portion of a Psychological Evaluation dated December 5-16, 2022 completed by Kevin R. Piske, Ph.D, Clinical Psychologist at Spence Counseling in Lawrence, Kansas, at the January 17, 2023 meeting. The evaluation concluded that the student "meets the criteria for Attention-Deficit / Hyperactivity Disorder, Inattentive type, being right on the border for a diagnosis of Combined Type . . . She also meets the criteria for Oppositional Defiant Disorder. " The school staff noted that the portion of the report shared with the district did not specifically name the student or include any identifying information.

The school staff stated that the areas of suspected disability considered at the manifestation determination were Other Health Impaired, Emotional Disturbance, and Specific Learning Disability. At the conclusion of the manifestation determination meeting, the school staff concluded that the behavior resulting in the recommendation for a long term suspension was not a manifestation of the student's suspected disability despite the parent's dissent.

A recommendation for an expulsion hearing was made and held on January 23, 2023 which resulted in the student being suspended out of school for the remainder of the 2022-23 school year and assigned to the suspension alternative program at East Heights Alternative School in order to access the general education curriculum.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.534(a) require a public agency to provide the IDEA disciplinary protections to a student not yet eligible for special education and related services who has engaged in behavior that violated a code of student conduct if the district had knowledge that the student may be a student with a disability prior to the behavior that resulted in the disciplinary action.

Federal regulations implementing the IDEA at 34 C.F.R. 300.534(b)(2) state that a public agency is deemed to have knowledge that a student may have a disability if the parent has made a request for a special education evaluation.

Federal regulations implementing the IDEA at 34 C.F.R. 300.536 state that a removal of more than 10 consecutive school days or a removal of more than 10 cumulative school days when a pattern of behavior exists constitutes a disciplinary change of placement. School staff make the determination if a pattern of behavior exists.

Federal regulation implementing the IDEA at 34 C.F.R. 300.530 require the public agency to determine if the behavior that violated a code of student conduct resulting in a disciplinary change of placement is a manifestation of the student's disability. If the determination is that the behavior that resulted in the disciplinary action is not a manifestation of the child's disability, the student may be disciplined in the same manner as any other student without a disability. However, if the determination is that the behavior that resulted in the disciplinary action is a manifestation of the child's disability, specific procedures must be followed and services must be provided to the student.

In this case, the parent made a request for a special education evaluation of the student on November 15, 2022 which put the district on notice that the student may be a child with a disability and eligible for the IDEA disciplinary protections.

Subsequent to that date, the student was suspended out of school for a total of 11 days over a period of 20 possible school days or 55% of the time for classroom disruptions and disrespect to staff. However, there is no documentation that the district considered

whether or not the more than 10 cumulative days of suspension constituted a pattern of behavior resulting in a disciplinary change of placement. It is noted that the student only attended two school days following the holiday break before being suspended for an additional 10 school days with a recommendation for a long term suspension.

When determining whether a disciplinary removal constitutes a change of placement due to a pattern of removals, school officials have broad discretion. Federal regulations, at 34 C.F.R. 300.536(b), state that the district determines on a case-by-case basis whether there is a pattern of removals that constitute a change of placement, and that determination by the district is subject to review only through due process and judicial proceedings. Thus, it is the district that determines whether a disciplinary removal constitutes a pattern of removals that result in a change of placement, and that decision is not reviewable through the complaint process. This complaint report does not disturb that discretion because the conclusion stated below is not that the student's behavior constituted a pattern that resulted in a change of placement. Rather, the conclusion below is based on the finding that the district did not make any determination regarding whether the removal on December 20 (the 11th cumulative day of removal) constituted a pattern that resulted in a change of placement. Had it made such a determination, this complaint investigator would not have authority to review that determination. The finding of a violation results from the district's failure to make the required determination when the 11th cumulative day of removal occurred, after the parent gave consent for an initial evaluation.

It is noted that the district did conduct a manifestation determination meeting as required on January 17, 2023 and determined the threatening behavior towards a peer on January 6, 2023 was not a manifestation of the student's suspected disabilities of Other Health Impaired, Emotional Disturbance, or Specific Learning Disability. As a result of this determination, USD #497 made a decision to long term suspend the student and assign her to attend the suspension alternative program at East Heights Alternative School to receive access to the general education curriculum in the same manner as any other student in the district.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to follow the IDEA disciplinary procedures for a student suspected of having a disability, specifically by not determining if more than 10 cumulative days of suspension constituted a pattern of behavior resulting in a disciplinary change of placement following the student's 11th cumulative day of suspension on December 20, 2022.

ISSUE FOUR: The USD #497, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to allow the parent access to the student's educational records, specifically the evaluation materials used in the special education evaluation during the 2022-23 school year.

Positions of the Parties

The parent reported she requested copies of all evaluation materials used in the special education evaluation on February 8, 2023 but was told they were not available until the evaluation had been completed. School staff informed her that she would get a copy of the evaluation results when eligibility is determined. The parent believes that all of the evaluation materials were part of the student's educational record and she should be able to get copies of those records.

USD #497 maintains the parent had access to all of the student's educational records during the 2022-23 school year. The district acknowledged the parent made a request on February 8 2023 to access the results of the initial evaluation assessments and surveys as they were being completed. The LEA noted that a summary of those results was included in the draft copy of the Evaluation Team Report provided to the parent on April 24, 2023 and reviewed with the parent on April 26, 2023.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #497.

The findings of Issue One, Two, and Three are incorporated herein by reference.

Both the parent and USD #497 acknowledge that the parent made a request for copies of all of the evaluation materials used in the special education evaluation completed during the 2022-23 school year on February 8, 2023.

USD #497 stated,

> Ms. Stithem replied to the parent's email, explaining the results of the surveys and assessments will be included in the evaluation report. Ms. Stithem explained that the school psychologist must have the opportunity to compile, review, and interpret the results to be included in the evaluation report, and the parent would receive a copy of the report before the evaluation meeting. At the time of

the parent request, the evaluation report was still being completed, and therefore not a part of the student's educational record. The evaluation report was shared with the parents two days prior to the initial evaluation meeting.

Interviews and documentation show a summary and interpretation of the evaluation materials was included in the Evaluation Team Report dated April 26, 2023. Notes from the eligibility determination meeting show the district staff reviewed the results of the assessments conducted during the special education evaluation with the parent during the meeting.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.501 require that parents are provided the opportunity to inspect and review all of the educational records of the student in respect to the identification and evaluation of the student.

Federal regulations implementing the IDEA at 34 C.F.R. 300.613(a) require the public agency comply with the parent request to inspect and review educational records without unnecessary delay and, in no case, more than 45 days after the request has been made. Federal regulations implementing the IDEA at 34 C.F.R. 300.613(b) give parents the right to request copies of the educational records if the failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records as well as to have the participating agency provide an explanation and interpretation of the records.

Federal regulations at 34 C.F.R. 300.611(b) state that education records mean the type of records covered under the definition of 'education records' in 34 C.F.R. part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1947 (FERPA)). 34 C.F.R. part 99 states that "education records " are records that are (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for or on behalf of the agency or institution. "Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, and microfiche."

In this case, the parent made a request for copies of the evaluation materials used as the basis of the special education evaluation of the student on February 8, 2023. The USD #497 informed the parent that the evaluation report was still being completed at the time of the parent request and the records requested were "therefore not a part of the student's educational record". It is noted that the LEA did provide a written

summary and interpretation of all the evaluation materials in the form of the Evaluation Team Report.

USD #497 inaccurately determined that the surveys and assessments were not considered "part of the student's education record." However, the evaluation materials, including the surveys and assessments used as the basis for the Evaluation Team Report dated April 26, 2023, are directly related to the student and are maintained by the public agency. As such, these records should be considered as separate, independent educational records and the parent has a right to access and review them.

However, the LEA was not required to provide a copy of the evaluation materials for the parent; instead the LEA was responsible for providing the parent with the opportunity to inspect and review and review those educational records. The parent only has a right to obtain copies of these educational records if there is some reason that not providing copies would prevent the parent from accessing and reviewing those records and there is no indication that this is the case.

Based on the foregoing, there *is* evidence to support a finding that USD #497 did not make the requested educational records accessible to the parent within the required 45 days timeline between the request on February 9, 2023 and March 25, 2023, and as such, is in violation of federal regulations at 34 C.F.R. 300.613(a).

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. 300.504 (a) require school districts to give a copy of the procedural safeguards available to parents of a child with a disability at least one time per school year. In addition, school districts must also give a copy to the parents in the following situations: 1) Upon initial referral or parent request for evaluation; 2) Upon receipt of the first State complaint and upon the receipt of the first due process complaint in a school year; 3) On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct in accordance with the discipline procedures in 300.530(h); and 4) Upon request by a parent.

   In this case, the district acknowledged the parent was not provided with a copy of the

procedural safeguards notice upon the parent's initial referral for a special education evaluation on November 15, 2022. Interview and documentation also found USD #497 failed to provide the parent with a copy of the procedural safeguards notice upon the written parent request on January 9, 2023.

B. 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.

   In this case, the school psychologist conferred with the parent on December 6, 2022 and the parent shared that the student was being evaluation for "ADHD, ODD, and other disorders." In addition, the parent shared concerns about behaviors she believed were impacting the student's academic progress. However, the January 5, 2023 PWN only proposed assessment in the area of academics. This would not have provided the multidisciplinary team with enough current information to make an eligibility determination regarding the suspected exceptionalities of Other Health Impaired or Emotional Disturbance. It is noted that the district did add additional assessment in the area of behavior in the PWN dated January 24, 2023 when the parent brought this concern to light following the disciplinary incident on January 6, 2022,

C. State regulations at K.A.R. 91-040-8(f) require school districts to complete the evaluation within 60 school days of receiving written consent from the parent. This timeline can only be extended for three specific instances: 1) the parent of the child repeatedly fails or refuses to produce the child for the evaluation; or 2) the child enrolls in a new district after the evaluation has begun and before the determination of eligibility; or 3) the parent consents in writing to extend the timeline.

   In this case, the parent provided written consent for the evaluation on January 9, 2023; however, the eligibility determination meeting was not held until April 26, 2023. This was a total of 66 school days to complete the initial evaluation and there was no acceptable reason to extend the evaluation timeline.

D. Federal regulations implementing the IDEA at 300.536 require that a public agency must determine if a pattern of behavior exists when a student is removed for more than 10 cumulative school days in a school year.

   In this case, the district had knowledge that the student may be a child with a disability in need of special education and related services when the parent made a referral for a special education evaluation on November 15, 2022. During the following 20 school days, the student was suspended out of school for a total of 11 school days. There is no documentation to support that USD #497 made a determination of whether or not

this more than 10 cumulative school days of suspension constituted a pattern of behavior resulting in a disciplinary change of placement following the 11th day of suspension on December 20, 2022.

E. Federal regulations implementing the IDEA at 34 C.F.R. 300.613(a) require the public agency comply with the parent request to inspect and review educational records without unnecessary delay and, in no case, more than 45 days after the request has been made.

   In this case, USD #497 inaccurately determined that the surveys and assessments used as the basis of the Evaluation Team Report were not considered "part of the student's education record" because the Evaluation Report was not yet complete at the time of the parent request. However, the evaluation materials, including the surveys and assessments used as the basis for the Evaluation Team Report dated April 26, 2023, are directly related to the student and are maintained by the public agency. As such, these records should be considered as separate, independent educational records and the parent has a right to access and review them. This investigation found that USD #497 did not make these requested educational records accessible to the parent within the required 45 days timeline between the request on February 9, 2023 and the 45th calendar day on March 25, 2023

Based on the foregoing identified violations, USD #497 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #497 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. 300.504 (a) which require school districts to give a copy of the procedural safeguards available to parents of a child with a disability at least one time per school year. In addition, school districts must also give a copy to the parents in the following situations: 1) Upon initial referral or parent request for evaluation; and 2) Upon request by a parent.

b. 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.

c. Comply with state regulations at K.A.R. 91-040-8(f) which require school districts to complete the evaluation within 60 school days of receiving written consent from the parent.

d. Comply with federal regulations implementing the IDEA at 34 C.F.R. 300.536 which require that a public agency must determine if a pattern of behavior exists when a student is removed for more than 10 cumulative school days in a school year.

e. Comply with federal regulations implementing the IDEA at 34 C.F.R. 300.613(a) which require the public agency comply with the parent request to inspect and review educational records without unnecessary delay and, in no case, more than 45 days after the request has been made.

2. No later than August 30, 2023, USD #497 shall conduct a training for the special education staff, regular education staff, school psychologists, and administrators working at Billy Mills Elementary School regarding the *Parent Rights in Special Education (Procedural Safeguards),* specifically the rights guaranteed to the parent as well as the IDEA requirements related to the provision of the notice. In addition, this training will highlight the parent's right to inspect and review education records as well as what constitutes an education record. No later than five days after the completion of the training, USD #497 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 #497 will provide SETS with any handouts and/or a copy of the presentation.

3. No later than August 30, 2023, USD #497 shall conduct a training for school psychologists employed by the district for the 2023-24 school year regarding the IDEA initial evaluation process, specifically conducting the review of existing data in order to conduct an evaluation that is sufficiently comprehensive to determine all the student's special education and related service needs as well as the 60 school day timeline and the actions that must be completed during that timeframe. No later than five days after the completion of the training, USD #497 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 #497 will provide SETS with any handouts and/or a copy of the presentation.

4. No later than August 30, 2023, USD #497 shall conduct a training for the special education case managers, school psychologists, and administrators working at Billy Mills Elementary School regarding the IDEA disciplinary procedures for students identified as

having a disability or suspected of having a disability. No later than five days after the completion of the training, USD #497 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 #497 will provide SETS with any handouts and/or a copy of the presentation.

5. No later than August 1, 2023, USD #497 shall review its procedures and practices related to tracking disciplinary changes of placement and the process for conducting a manifestation determination. USD #497 will update or create a written procedure / checklist for special education case managers and administrators to follow during the 2023-24 school year to ensure that appropriate procedures are followed when a student with a disability or suspected of having a disability exhibit behavior that results in a breach of the student code of conduct. USD #497 will develop a plan to share this written procedure / checklist with the special education staff within the district no later than August 1, 2023. USD #497 shall provide SETS with a copy of the written procedure / checklist and documentation that the plan for distribution was implemented no later than August 15, 2023.

6. No later than June 30, 2023, USD #497 will arrange for the parent to inspect and review the student's education records, specifically the evaluation materials, including the surveys and assessments used as the basis for the Evaluation Team Report dated April 26, 2023. USD #497 shall provide SETS with documentation that the access to these records was offered to the parent at a mutually agreeable date and time no later than July 15, 2023.

7. Further, USD #497 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 InvestigatorNancy Thomas

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 PRIL 18, 2023

DATE OF REPORT MAY 18, 2023

This report is in response to a complaint filed with our office on behalf of the student by her parent, The parent. In the remainder of the report, the student will be referred to as "the student." The parent will be referred to as "the parent," "the mother," or "the complainant." The grandmother is the student's grandmother, and in the report, The grandmother will be referred to as "the grandmother."

The complaint is against USD #259, Wichita Public Schools. In the remainder of the report, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #259.

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 18, 2023. A one week extension was granted at the request of the complaint investigator, and the 30-day timeline plus the extension ended on May 25, 2023.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, spoke to the parent by telephone on April 19, 2023, to clarify the issues in the complaint and on April 28, 2023 to clarify the collection of evidence. In addition, Gwen Beegle interviewed the parent on May 8, 2023 and the grandmother on May 3, 2023.

Gwen Beegle and Donna Wickham (Complaint Investigator) interviewed Dr. Erica Shores, USD #259 Executive Director of Student Support Services, Patricia JuAire, 504 Team Leader, Brooks Magnet Middle School and Abigail Dedeaux, Social Worker, Brooks Magnet Middle School on May 9, 2023. Jennifer Erickson, Terneilus Shanklin and Dr. Shores were interviewed on May 11, 2023.

The Complaint Investigators also received emails and supporting documents from the parent and USD #259 between April 23, 2023, and May 18, 2023.

In completing this investigation, the Complaint Investigators reviewed documentation provided by the complainant and district. Additional documentation was provided and reviewed, and the following materials were carefully read and used as the basis of the findings and conclusions of the investigation.

Documents and Reports

- 2021-22 Q4 [student initial] Report Card
- Wichita USD #259 School Year Calendar, 2022-23
- Student Discipline Profile for the student for the 2022-23 school year
- Student Attendance History Report for the student for the 2022-23 school year
- General Ed Student Contact Log for the student for the 2022-23 school year
- SNAP Health Record Conditions Alerts for the student for the 2022-23 school year
- SNAP Health Record Daily Visit Log for the student for the 2022-23 school year
- Special Ed Student Contact Log for the student for the 2022-23 school year
- Period Student Attendance Profile for the student with entries dated August 15, 2022 - November 17, 2022 showing ISS
- Brooks Safety Plan for the student dated August 31, 2022, updated October 20, 2022.
- 2022-23 Q1 [student initial] Report Card October 14, 2022
- Disciplinary Action Form # 10754 dated October 6, 2022
- Disciplinary Action Form #12880 dated October 18, 2022
- Children's Mercy Letter regarding the student November 2, 2022
- Notice and Consent for Initial Evaluation for Section 504 signed by parent giving consent on November 7, 2022
- Section 504 Eligibility Guide for the student dated December 7, 2022
- Disciplinary Action Form#26223 dated December 12, 2022
- Children's Mercy Weight Management Program memo to school dated December 13, 2022
- Disciplinary Action Form #26233 for the student dated December 14, 2022
- 504 Team Meeting Notes for the student dated December 14, 2022
- 504 Accommodation Plan for the student dated December 15, 2022
- 2022-23 Q2 [student initial] Report Card December 16, 2022
- Manifestation Determination Review Notice of Meeting dated January 9, 2022
- Children's Mercy Weight Management Program memo to school dated January 10, 2023
- Parent formal request for special education evaluation, by email from the parent to the school social worker and administrator dated January 17, 2023 at 8:19 a.m.
- Period Attendance Profile for the student 2022-23 with entries dated January 30, 2023 - April 14, 2023 showing ISS

- 504 Meeting Notes for the student dated January 27, 2023
- 504 Accommodation Plan for the student dated January 30, 2023
- Disciplinary Action Form #33305 for the student dated February 8, 2023
- 504 Meeting Notes for the student dated February 8, 2023
- 504 Accommodation Plan for the student dated February 9, 2023
- Prior Written Notice for Evaluation and Request for Consent dated February 9, 2023 and signed by the parent on February 9, 2023
- Disciplinary Action Form #34129 for the student dated February 10, 2023
- Educational Occupational Therapy Referral for Observation and Screening dated February 23, 2023
- FERPA Parts 1-5 Released to parent by District General Counsel on February 23, 2023
- Disciplinary Action Form #37452 for the student dated February 28, 2023
- Disciplinary Action Form #39714 for the student dated March 8, 2023
- Disciplinary Action Form #40155 for the student dated March 9, 2023
- 2022-23 Q3 [student initial] Report Card March 10, 2023
- Disciplinary Action Form #40849 for the student dated March 22, 2023
- Disciplinary Action Form #46025 for the student dated March 23, 2023
- Disciplinary Action Form #41744 for the student dated March 27, 2023
- Disciplinary Action Form #41828 for the student dated March 27, 2023
- Disciplinary Action Form #43944 for the student dated April 3, 2023
- Disciplinary Action Form #43974 for the student dated April 4, 2023
- Disciplinary Action Form #45708 for the student dated April 14, 2023
- Disciplinary Action Form #47212 for the student dated April 20, 2023
- Disciplinary Action Form #48794 for the student dated April 26, 2023
- Disciplinary Action Form #48820 for the student dated April 26, 2023
- Disciplinary Action Form #48863 for the student dated April 26, 2023
- Disciplinary Action Form #48987 for the student dated April 26, 2023
- Notice of Meeting to review the evaluation, determine eligibility and develop initial IEP if eligible dated May 1, 2023 for a meeting on May 12, 2023.
- The District's Response to 23FC259-010 dated May 3, 2023
- Timeline for the student, dated May 3, 2023
- 2022-23 CST Agendas re [student initial]
- 2022-23 CST Minutes re [student initial]
- 2023 Support Staff Visit Log for the student
- Cross referenced ISS/Attendance for the student
- ISS Check In Logs, dated October, 2022; November, 2022; February 2023; March, 2023; March 27, 2023; March 29, 2023; April 18, 2023; April 20, 2023; May 3, 2023.
- Compiled dates (updated May 11) for [student initials] dated May 11, 2023
- [Student Initials] ISS in office dates
- [Student Initials] Social Studies Communication of Assignments

- [Student Initials] ISS Math Assistance
- [Student Initials] Science Assistance
- Period Attendance Profile for the student 2022-23 through May 10, 2023 not showing ISS
- Multidisciplinary Team Report (MTR) Draft, dated May 12, 2023

Emails

- Email from Jerusha Willenberg (Assistant Principal, Brooks Middle School) to the parent, copied to Walter Givens (Principal, Brooks Middle School) and Donna Simpson (Assistant Principal, Brooks Middle School) dated October 6, 2022 at 8:53 p.m.
- Email from the parent to Ms. Willenborg, Mr. Givens and Ms. Simpson dated October 6, 2022 at 9:25 p.m.
- Email from the parent to Ms. Willenborg, Mr. Givens and Ms. Simpson dated October 6, 2022 at 9:49 p.m.
- Email from the parent to Ms. Willenborg dated October 10, 2022 at 8:08 a.m.
- Email from Ms. Willenborg to the parent dated October 10, 2022 at 3:48 p.m.
- Email from Sarah Kincaid (Math Teacher) to the parent dated October 18, 2022 at 7:35 a.m.
- Email from Ms. Willenborg to the parent dated October 19, 2022 at 10:35 a.m.
- Email from Donna Simpson (Assistant Principal, Brooks Middle School) to the parent, Mr. Givens and Sharon Rye (Employee Relations and Title IX) dated October 19, 2022 at 12:27 p.m.
- Email from Ms. Simpson to the parent, Mr. Givens and Ms. Rye dated October 19, 2022 at 2:53 p.m.
- Email from Ms. Kincaid to the parent dated October 25, 2022 at 7:13 a.m.
- Email from Ms. Kincaid to the parent dated October 26, 2022 at 7:18 a.m.
- Email from Shantell Nichols (Language Arts Teacher) to the parent dated October 26, 2022 at 1:21 p.m.
- Email from the parent to Ms. Kincaid dated November 1, 2022 at 6:05 a.m.
- Email from Ms. Kincaid to the parent dated November 1, 2022 at 6:41 a.m.
- Email from the parent to Ms. Kincaid dated November 1, 2022 at 8:35 a.m.
- Email from Ms. JuAire to the parent on November 3, 2022 at 8:12 a.m.
- Email from Ms. Kincaid to the parent dated November 7, 2022 at 12:08 p.m.
- Email from the parent to Ms. Kincaid dated November 7, 2022 at 12:31 p.m.
- Email from Patricia JuAire (School Counselor, Brooks Middle School) to the parent, copied to the 504 team, dated November 3, 2022 at 8:12 a.m.
- Email from the parent to Ms. Simpson dated November 9, 2022 at 7:34 a.m.
- Email from Ms. Simpson to the parent dated November 9, 2022 at 9:59 a.m.
- Email from the parent to Ms. Simpson dated November 9, 2022 at 10:21 a.m.
- Email from Ms. Nichols to Mr. Givens, Ms. Simpson, Ms. Willenborg, Ms. JuAire, Jennifer Perry (School Nurse), Megan Story (Counselor), and Abigail Dedeaux (School Social Worker) dated November 22, 2022 at 1:08 p.m.

- Email from Ms. Simpson to the parent, copied to Ms. Nichols, Ms. Willenborg, and Mr. Givens dated November 22, 2022 at 5:18 p.m.
- Email from Haylie Patton (Homeroom and Science Teacher) to the parent dated November 28, 2022 at 6:51 a.m.
- Email from the parent to Ms. Nichols and Ms.Simpson dated November 28, 2022 at 2:06 and 2:24 p.m.
- Email from Ms. Simpson to the parent dated November 28, 2022 at 7:06 p.m.
- Email from the parent to Ms. Simpson, copied to Jacinta Unruh (Instructional Coach), Ms. Nichols, Ms. Willenborg and Mr. Givens dated November 28, 2022 at 7:12 p.m.
- Email from Ms. Simpson to the parent and the student, copied to Ms. Willenborg and Mr. Givens dated November 29, 2022 at 6:50 p.m.
- Email from the parent to Ms. Simpson and the student, copied to Ms. Willenborg and Mr. Givens dated November 30, 2022 at 5:39 p.m.
- Email from the parent to Ms. Simpson and Ms. Willenborg dated January 6, 2023 at 7:22 p.m.
- Email from Ms. JuAire to the parent dated January 9, 2023 at 8:32 a.m.
- Email from the parent to Ms. JuAire dated January 9, 2023 at 5:12 p.m
- Email from Ms. JuAire to the parent dated January 10, 2023 at 7:19 a.m.
- Email from the parent to Ms. JuAire copied to Amanda Chance (Section 504 Coordinator) dated January 10, 2023 at 7:50 a.m..
- Email from the parent to Ms. Willenborg and Ms. Simpson, copied to Ms. Chance, Ms. Dedeaux and Ms. JuAire dated January 10, 2023 at 8:26 p.m.
- Email from Ms. Chance to Kimber Kasitz (Director of Health, Homebound and 504 Services) dated January 11, 2023 at 8:18 a.m.
- Email from Mr. Givens to the parent dated January 11, 2023 at 10:34 a.m.
- Email from the parent to Mr. Givens, Ms. Willenborg, Ms. Simpson, Ms. Dedeaux, Ms. Chance dated January 11, 2023 at 2:05 p.m
- Email from the parent to Mr. Givens, Ms. Willenborg, Ms. Simpson, Ms. Dedeaux, Ms. Chance dated January 11, 2023 at 3:21 p.m
- Email from Mr. Givens to the parent, Ms. Willenborg, Ms. Simpson, Ms. Dedeaux, Ms. Chance dated January 11, 2023 at 3:47 p.m.
- Email and letter from Daniel Lawrence (General Counsel, Wichita Public Schools) to the parent dated January 11, 2023 at 7:22 a.m.
- Email from the parent to Ms. JuAire copied to Ms. Chance dated January 12, 2023 at 7:42 a.m.
- Email from the parent to Ms. JuAire copied to Ms. Chance and Mr. Givens dated January 12, 2023 at 8:11 am.
- Email from Ms. Simpson to the parent copied to Mr. Givens and Ms. Willenborg dated January 12, 2023 at 11:22 a.m.
- Email from the parent to Mr. Lawrence dated January 12, 2023 at 9:42 p.m.
- Email from Ms. Simpson to the parent dated January 13, 2023 at 9:54 a.m.

- Email from the parent to Ms. JuAire, copied to Ms. Chance and Iris McIntosh (Brooks Clerk) dated January 18, 2023 at 5:56 a.m.
- Email from the parent to Ms. JuAire, Mr. Givens, Ms. Simpson, Ms. Dedeaux, Ms. Chance dated January 18, 2023 at 6:01 a.m.
- Email from Ms. JuAire to the parent dated January 18, 2023 at 8:29 a.m.
- Email from the parent to Ms. JuAire, Mr. Givens, Ms. Simpson, Ms. Dedeaux, Ms. Chance copied to the 504 Team dated January 18, 2023 at 5:23 p.m.
- Email from Ms. JuAire to Noah Holloway (Science Teacher), Margaret Dunn (Drama Teacher), James Edwards (Social Studies Teacher), Ms. Patton, Ms. Kincaid, Ramiah Richard (Physical Education Teacher), Ms. Nichols, 504 Team, Ms. Dedeaux, Ms.Willenborg, and Mr. Givens on January 27, 2023 at 10:47 am.
- Email from the parent to Ms. Simpson dated January 31, 2023 at 4:47 p.m.
- Email from Ms. Simpson to the parent dated January 31, 2023 at 5:00 p.m.
- Email from the parent to Ms. Simpson dated February 1, 2023 at 7:12 a.m.
- Email from the parent to Ms. Simpson copied to Mr. Givens and Vince Evans (Assistant Superintendent of Student Support Services) dated February 6, 2023 at 5:49 a.m.
- Email from Mr. Givens to the parent, copied to Ms. Simpson and Mr. Evans dated February 6, 2023 at 5:58 a.m.
- Email from Ms. Simpson to the parent and Mr. Givens copied to Mr Evans dated February 6, 2023 at 8:29 a.m.
- Email from Ms. DeDeaux to Channon Hankins (Social Worker, Coleman) and Jennifer Erickson (School Psychologist, Coleman) dated February 6, 2023 at 8:56 a.m.
- Email from the parent to Ms. JuAire, Mr. Evans, Mr. Givens, Ms. Simpson, Ms. Dedeaux, Ms. Chance, Ms. Kincaid, Ms. Dunn, Mr. Lawrence and 504 Support dated February 7, 2023 at 8:38 a.m.
- Email from Ms. JuAire to the parent, Mr. Evans, Mr. Givens, Ms. Simpson, Ms. Dedeaux, Ms. Chance, Ms. Kincaid, Ms. Dunn, Mr. Lawrence and 504 Support dated February 8, 2023 at 7:06 a.m.
- Email from Ms. JuAire to the parent, Ms. Kincaid, Ms. Dunn, Ms. Nichols, Ms. Patton, Mr. Edwards, Mr. Richard, Mr. Holloway, Ms. McIntosh, Leslie Nolen Garner (Administrative Assistant), Mary Hall (Administrative Assistant), Ms. Willenborg, Mr. Givens, and Ms. Simpson dated February 8, 2023 at 10:16 a.m
- Email from the parent to Ms. Chance, Mr. Evans, and Ms. Kasitz copied to Mr. Lawrence dated February 16, 2023 at 7:07 a.m.
- Email from Ms. Kasitz to the parent, Mr. Evans, Mr. Lawrence and Ms. Chance dated February 16, 2023 at 11:23 a.m.
- Email from the parent to Ms. Simpson dated March 23, 2023 at 6:00 a.m.
- Email from Ms. Simpson to Mr. Baca copied to Ms. DeDeaux, Ms. Willenborg and Mr. Givens dated March 23, 2023 at 8:12 a.m.
- Email from the parent to Ms. Simpson dated March 27, 2023 at 2:49 p.m.

- Email from Ms. Simpson to the parent dated March 31, 2023 at 8:24 a.m.
- Email from the parent to Ms. Simpson dated April 3, 2023 at 12:19 p.m.
- Email from Ms. Simpson to the parent dated April 3, 2023 at 7:38 p.m.
- Email from the parent to Ms. Simpson dated April 4, 2029 at 5:49 a.m.
- Email from Ms. Simpson to the parent dated April 5, 2023 at 9:40 a.m.
- Email from Ms. Simpson to the parent dated April 6, 2023 at 8:12 a.m.
- Email from Ms. Simpson to the parent dated April 6, 2023 at 8:47 a.m.
- Email from the parent to Ms. Simson copied to Ms. Kasitz, Ms. Chance and Mr. Evans dated April 6, 2023 at 9:18 a.m.
- Email from Ms. Simpson to the parent dated April 6, 2023 at 9:43 a.m.
- Email from the parent to Ms. Simpson copied to Ms. Kasitz, Ms. Chance and Mr. Evans dated April 14, 2023 at 12:07 p.m.
- Email from Ms. Simpson to the parent dated April 17, 2023 at 8:23 a.m.
- Email from the parent to Ms. Simpson copied to Mr. Givens, Ms. Kasitz, Ms. Chance and Mr. Evans dated April 17, 2023 at 10:12 a.m.
- Email from the parent to Ms. Simpson copied to Mr. Givens, Ms. Kasitz, Ms. Chance and Mr. Evans dated April 17, 2023 at 3:29 p.m.
- Email from Mr. Givens to the parent dated April 17, 2023 at 5:15 p.m.
- Email from the parent to Ms. Simpson and Mr. Givens copied to Ms. Kasitz, Ms. Chance, Amanda Kingrey (Assistant Superintendent), and Mr. Evans dated April 17, 2023 at 7:14 p.m.
- Email from Ms. Simpson copied to Mr. Givens dated April 17, 2023 at 8:39 p.m.
- Email from Ms. DeDeaux to Ms. Erickson dated April 18, 2023 at 12:32 p.m.
- Email from Ms. Hankins to the parent dated April 24, 2023 at 1:03 p.m.
- Email from the parent to Ms. Simpson copied to Ms. Kasitz, Ms. Chance and Mr. Evans dated April 27, 2023 at 7:40 a.m.
- Email from Ms. Simpson to the parent copied to Ms. Kasitz, Ms. Chance and Mr. Evans dated April 27, 2023 at 11:06 a.m.
- Email from the parent to Ms. Simpson copied to Ms. Kasitz, Ms.Chance, Mr. Evans, and Ms. Kingrey dated April 27, 2023 at 2:11 p.m.
- Email from Ms. Simpson to the parent dated April 27, 2023 at 12:51 p.m.
- Email from the parent to Ms. Hankins dated May 3, 2023 at 6:12 a.m.
- Email from Deanna Carter (LMSW Open Doors) to parent dated May 4, 2023 at 10:24 a.m.
- Email from Ms. Hankins to the parent dated May 4, 2023 at 12:31 p.m.
- Email from parent to Ms. Erickson and copied to Karen Waterman Overgaard (Principal, Coleman Middle School), Ms. DeDeaux, Dr. Erica Shores (Executive Director Student Support Services) Ms. Hankins and Dr. Beegle dated May 10, 2023 at 12:56 p.m.
- Email from the parent to the complaint investigators dated May 18, 2023 at 1:22 p.m.

Background Information

This investigation involves a 12-year-old student who is enrolled in sixth grade at Brooks Middle School in USD #259. She was determined to be eligible for accommodations under Section 504 during the current school year on December 7, 2022 when she was 11 years old. Her eligibility was determined based on her medical diagnoses of anxiety, depression, and obesity and on school observations that her disability affected her in major life activities of neurological function, learning, thinking, working and peer relationships. Her working diagnosis from a community mental health center where she attends therapy is adjustment disorder with mixed anxiety and depressed mood. The student receives medical care and weight management at Children's Mercy Hospital and she has received the following diagnoses: anxiety, child victim of psychological bullying, class 2 and other obesity, headache in pediatric patient, and post traumatic stress disorder. At school, she has multiple 504 accommodations that include permission to see the social worker, nurse, and to go to the bathroom at her request. Among other accommodations are calm interactions with adults when disciplining, special seating, and scheduling to avoid negative peer interactions. At the end of her final year of elementary (2021-2022), her standards based grades varied between 2.5 and 3.0. During the current school year, her end of quarter grade point averages were: Q1 (1.24), Q2 (1.25) and Q3 (.89). Her mother requested a special education evaluation on January 17, 2023 and the district provided prior written notice of its intent to evaluate the student on February 7, 2023, which was signed by the parent on February 9, 2023.

> ISSUE ONE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford the parent procedural safeguards, specifically to provide copies of the parent rights and to notify the parent when removing the child from her placement.

Positions of the Parties

The complainant alleged that the district failed to meet its obligation to provide a copy of the procedural safeguards at the time of the request for a special education evaluation. In addition, the complainant stated that the student has been removed from her placement without parental participation in decision making or knowledge of the removal.

The district refuted this allegation, stating: they gave the parent procedural safeguards at the required times: upon the parent's referral for an initial evaluation for special

education and when providing notice of the evaluation and eligibility meeting (at least once annually). The district contended that it was not required to provide them for the disciplinary removals from school because the short-term removals for this student did not constitute a change in placement, and therefore, the school was not required to provide the procedural safeguards to the parent (34 C. F. R. 300.530(h) Notification, and K.A.R. 91-40-33).

The district further responded: "To ensure the parent had knowledge about their special education rights (used interchangeable herein with parental rights; parent rights) as required: (1) The school Social Worker (SW) hand-delivered the parental rights along with the Prior Written Notice for Evaluation and Request for Consent (PWNE) to the parent on 2-9-23 as well as with the 5-1-23 Notice of Meeting for the 5-12-23 meeting as shown in the Special Ed Student Contact Log. The parent did not request a copy of the procedural safeguards; and, this also meets the requirement of providing the Parent the procedural safeguards at least one time per school year. The school also sent the procedural safeguards with the 1-9-23 Notice of Meeting (NOM) for the Manifestation Determination Review (MDR) meeting, originally scheduled for 1-10-23. The school followed regular notice procedures that they do with all students when suspending a student, including the provisions of the Kansas Pupil Suspension and Expulsion Act, K.S.A. 72-6114."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent, grandparent, and staff in the district. Because the district provided its evidence with regard to change of placement in Issue Four, this report will likewise provide its findings on whether a change of placement occurred in Issue Four and Issue One will only investigate whether parent rights were provided in accordance with IDEA.

The district reported that parent rights were included with a January 9, 2023 notice of meeting to attend a manifestation determination review (MDR) on January 11, 2023. The January 9, 2023 email to the parent showed that the parent rights for Section 504 were included as an attachment.

The parent requested a special education evaluation by email to the school on January 17, 2023. According to the district staff interview, the school did not provide a copy of the parent rights in reply to her emailed request. The district did not provide an emailed reply that showed that they provided a copy of the parental rights at the time of the parental request.

The district reported and a contact log by the social worker documented that a paper copy of the parent rights was provided to the parent on February 9, 2023 in person. The parent denied she was handed a paper copy of the parent rights when she came to the school and signed consent for the special education evaluation on February 9, 2023. She reported that her rights under IDEA were not discussed at that time. The signed consent does not indicate if parent rights were provided to the parent.

The February 9, 2023 PWN signed by the parent included the statement (below); however there is no check off box to indicate that the rights were provided to the parent.

> *"PROCEDURAL SAFEGUARDS TO PROTECT PARENT'S RIGHTS*
>
> *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. You received a copy of your rights when the initial referral for evaluation was made. You should carefully read them and, if you have any questions regarding your rights or if you wish to receive an additional copy of your rights, you may contact the special education staff in your school."*

Email correspondence summarizing the conference between the sending school's social worker and the parent on February 9, 2023 included the parent's signed consent to evaluate. The email exchange discussed the logistics for completion of the evaluation but did not reference in the handoff whether parent rights had been provided. The document received by the evaluation team did not indicate that the parent received a copy of her rights. No indication that the team conducting the evaluation provided parent rights.

The district and parent reported and documents showed that a copy of the parent rights for special education were provided to the parent with the May 1, 2023 Notice of Meeting for the May 12, 2023 meeting on evaluation and eligibility.

Applicable Regulations and Conclusions

According to K.S.A. 72-3430(e), schools are required to provide a copy of the Parent Rights in Special Education Notice to the parents at least one time in a school year and for the following specific actions: (a) upon a referral or parent request for initial evaluation, (b) upon the first formal complaint or due process complaint filed in a school year, (c) upon a disciplinary removal from school that constitutes a change in placement; and (d) upon parent request. According to 34 C.F.R. 300.504 (a) A copy of the procedural safeguards must be given to the parents only one time a school year, except that a copy also must be given to the parents— (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year; (3) In accordance with the discipline procedures in § 300.530(h); and (4) Upon request by a parent.

In this case, the district had the obligation to provide Parent Rights in Special Education at least one time in the school year and for several specific actions.

First, the district had an obligation to provide the parent with Parent Rights in response to the parent's request for a special education evaluation on January 17, 2023. It is the district's practice to include the Parent Rights electronically with the Prior Written Notice responding to the request, however, this email was not provided. The district responded that they provided the Parent Rights in person when the parent came to the school to sign consent for the evaluation, however the parent disputed this.

It is found that the parental rights were provided electronically to the parent with the NOM for the evaluation and eligibility meeting scheduled for May 12, 2023 (later rescheduled for May 16, 2023) meeting the one time annual obligation.

It is noted that the Kansas State Department of Education provided parent rights in response to the parent filing a child complaint on April 18, 2023 so this obligation was met.

Although not a special education action, the district provided parent rights to the parent with the NOM dated January 9, 2023 for the Manifestation Determination Review to discuss whether the disciplinary removals from school constitutes a change in placement. This meeting was scheduled prior to the parent requesting a special education evaluation so the district did not provide IDEA parent rights, but documentation showed the district provided Section 504 Parent rights electronically.

This action is noted here because Issue Four will investigate whether the district's discipline practices met the criteria of a change of placement.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to provide copies of the parent rights to the parent in response to her request for a special education evaluation on January 17, 2023. Although the district reported and produced a log documenting that the parent rights were handed to the parent, the parent disputes this. In all other situations with this parent the district provided parent rights electronically. Further, when handing off the signed consent to the evaluation team there was no documentation that that team was informed that the parent had received parent rights. Although it is certainly possible the district did provide the parent rights in person in this case the complaint investigator is holding the district to the higher standard of ensuring that the parent receives her rights for this initial special education action.

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to afford the parent procedural safeguards, specifically to provide copies of the parent rights and to notify the parent when removing the child from her placement.

> ISSUE TWO: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to complete a comprehensive special education evaluation for a child with a suspected disability that involved the parent, addressed all areas of suspected disability including an FBA, and was conducted within 60 days.

Positions of the Parties

The complainant alleged that the district failed to involve the parent in the special education evaluation since she had signed the consent to evaluate the student. The parent alleged that at the time of the complaint, she had only one email from an occupational therapist but no further information or inquiries regarding the evaluation. The parent alleged that she had not been requested to provide parental rating scales, discuss the student's behavior at home, or to provide health records for the special education evaluation. The complainant also stated that she requested a copy of the report to review 5 days in advance of the evaluation and eligibility meeting.

The district responded that it is in the process of completing a comprehensive evaluation for a student with a suspected disability (and has a disability under Section 504), is involving the parent, and addressing all areas of suspected disability, and it is expected to be completed in under 60 school days as required (an FBA was not requested as part of this evaluation nor is it required at this time). A 1-17-23 email from Parent to the school Social Worker (SW) and school Administrator shows that Parent requested a comprehensive special education evaluation. 2022-2023 Child Study Team (CST) agendas and notes show when the school CST met and discussed matters related to this Student, including discussions about the ongoing conducting of her comprehensive special education evaluation. Because of previous interactions between the parent and the current school staff who would have been involved in conducting the special education evaluation, Email exchanges between the two schools show their communication about procedural matters as well as access to student records and meetings between them.

On February 9, 2023 per the Special Ed Student Contact Log, the social worker provided the parent with a Prior Written Notice for Evaluation and Parent's Rights, and the parent signed consent. Once consent was signed the two schools coordinated dates to complete the necessary evaluations and collaborate and collect information from the parent. The Evaluation Team will consider whether the Student's absences and instruction while in ISS have affected her educational performance and grades. During the period of the special education evaluation, the school has continued to carry out the Student's 504 Plan. A NOM for the evaluation was emailed to the Parent on May 1, 2023 along with her Parent Rights for a meeting to be held on May 12, 2023 to review the Comprehensive Special Education Evaluation results and, if determined eligible, to develop an IEP for the Student; the date scheduled for the evaluation meeting is several school days before the 60 school-day timeline. On May 3, 2023 the parent contacted a member of the evaluation team, stating she was not available for the proposed date already scheduled, and provided several dates when she and her advocate could make the meeting. The district worked with the family and team members to determine and set a new date that is within the 60 day evaluation window.

Findings of the Investigation

The findings of Issue One are incorporated herein by reference.

This issue addressed three components of the IDEA evaluation regulations, 1) meeting the timeline for conducting the evaluation, 2) including the parent in the evaluation and 3) conducting a comprehensive evaluation. Each of these components will be addressed

in the findings. The following findings are based upon a review of documentation and interviews with the parent and staff in USD #259.

Timeline

Documentation showed that the parent requested a special education evaluation on January 17, 2023 by email.

Documentation showed that the parent signed consent for a special education evaluation on February 9, 2023 as part of a Prior Written Notice for Evaluation or Reevaluation and Request for Consent. Both the parent and district verify this by report.

The School Year Calendar for 2022-2023 showed that 60 school days beginning February 9, 2023 ended on May 17, 2023. This date was verified by the district.

The district reported they considered an expeditious evaluation timeline but because the student was not in the middle of a disciplinary action at the time of the parent request it was not required. Although it was not required the district reported they planned to complete the evaluation on an accelerated timeline, however truancy, suspensions and team member availability precluded it occurring more rapidly.

Documentation showed that the Notice of Meeting for discussion of the findings from the evaluation report and Parent's Rights document dated May 1, 2023 with a scheduled date of the meeting to discuss the Evaluation Report set on May 12, 2023 was sent May 1, 2023. On May 3, 2023 the parent requested the meeting be moved to an alternate date in an email. Emails and reports showed that the district and parent worked together to set a new date within the evaluation timeline and accommodating schedules.

The parent and district reported that the Evaluation and Eligibility meeting is scheduled for May 16, 2023.

The parent reported she received a draft Multidisciplinary Team Report (MTR) dated May 12, 2023 one week in advance on or about May 5, 2023. The district reported that it included the scores of the evaluation collected and reviewed to date, but additional interpretations will be provided at the meeting as the team was still completing the evaluation materials.

Parent Involvement

The January 17, 2023 parent request for a special education evaluation stated, "I would like a full psycho-educational evaluation together with appropriate testing for learning disabilities. I request my child be tested in all suspected areas of for (sic) disability (34 CFR 300.304), including the areas of social, emotional, executive function, occupational therapy including sensory processing, and speech and language including pragmatic language."

The district reported that the parent came to school on February 9, 2023 and signed consent on February 9, 2023.

According to the Special Ed Student Contact Log the social worker spoke with the parent about using a different evaluation team to conduct the evaluation and the parent agreed. The parent reported this conversation and the agreement.

The parent and district reported that neither party discussed the evaluation plan prior to the parent signing consent for the evaluation on February 9, 2023. The district reported that the PWN was specific in asking for an evaluation to determine if a learning disability was present and that the specific evaluations requested were directed to answering those questions.

The parent reported that the student stated that the evaluation team was working with her but that no one from the evaluation team contacted her until after she filed the KSDE Child Complaint on April 18, 2023.

The school psychologist from the evaluation team said that she did not contact the parent prior to the evaluation since the evaluation request was clear and the evaluation team was contacted to complete the evaluation after discussion occurred between the student's school staff and parent. She stated she and staff contacted the parent during the evaluation to collect information representing the parent perspective and in response to additional testing viewed as relevant based on findings. Both parties and documents showed the parent completed the social history and Behavior Assessment System for Children - Third Edition-Child (BASC-3 Child) for the MTR with the social worker.

Comprehensive Evaluation

The PWN dated February 9, 2023 provided an explanation for the initial evaluation as "parent requested testing in the following areas: a full psycho-educational evaluation together with appropriate testing for learning disabilities, including the areas of social, emotional, executive function, occupational therapy including sensory processing, and speech and language including pragmatic language."

The table below shows the new data proposed, the existing data that would be reviewed and included in the evaluation and the evaluation conducted and reported in the draft MTR dated May 12, 2023.

Proposed evaluation plan from February 2023 PWN	Existing data	New data
Health/Motor Ability	Children's Mercy Report	Social History Health History
Vision	wears glasses, history of astigmatism	March 8, 2023 R, L and Both pass with glasses
Hearing	Review indicated, but no indication of documentation provided	March 8, 2023 R and L/ Pass
Social/Emotional status/behavioral status	Discipline referrals Children's Mercy Report	BASC-3-Child, Scale of Assessment Emotional Disturbance -3 autism rating scale Social history Diagnoses of anxiety, PTSD, adjustment disorder
General Intelligence	Review indicated, but no indication of documentation provided	WISC
Academic Performance	Use of 504 accommodations Teacher report (Science, ELA, Choir, Math) Tier 2 Literacy and Math Interventions FastBridge	Woodcock Johnson IV-Test of Achievement Social history
Communicative status	Review indicated, but no indication of documentation provided	Oral and Written language Scales II (OWLS II) Pragmatic Language Checklist Whole Word Accuracy rating scale observation
Occupational Therapy		Wide Range Visual Motor Assessment (WRVMA), Sensational Brain-School Checklist, EASY-OT Sensory Processing Skills - Teacher/Therapist Evaluation, Direct Observation, Functional Skills Assessment

The district reported that the reason an evaluation team from another building in the district was assigned to conduct the evaluation was that the student needed an experienced team and past discord between the school and parent may impact the objectivity of the evaluation.

The school psychologist reported since the student was unfamiliar to her prior to testing she evaluated her level of anxiety and discomfort. She stated she observed her to be calm and relaxed, chatting with peers and the examiner. At one point during testing when the psychologist was stumbling over wording, the student said, “some days are like that”. She related that the student was polite, pleasant, persisted in difficult tasks, used regular courtesy phrases, and verbally processed her problem solving out loud. She was also observed to vocalize processing problems and academic processes when she wrote something. She observed times when the student appeared fatigued by yawning, but declined a break. Her observations were that the student was bright and academically strong and could complete the requested testing efficiently. She further reported that all evaluators found her a pleasure to work with and felt their evaluation was an accurate representation.

The school psychologist reported she was aware of the student’s discipline problems, behaviors, history of anxiety, PTSD, and bullying history. Although behavior was not the impetus for the evaluation she stated that any evaluation for special education eligibility would look at social and emotional issues. The school psychologist reported because of the student’s history of discipline issues, and parent reports from the 504 evaluation, she conducted additional assessments than would be usual in this area. She stated that she additionally be evaluated for autism to ensure that it was not inadvertently overlooked. She stated that she would be following up with the parent to discuss discrepancies between parent and school staff report in some behavioral/social/emotional rating scales to bring to the May 16, 2023 Evaluation and Eligibility meeting. She reported that she did not conduct a functional behavior assessment (FBA) as a part of the initial evaluation because it was premature in her opinion as a professional. She stated at this point she was conducting evaluation to determine if the student met eligibility for special education services. Once that question was answered as part of the evaluation team she and the team members would determine how best to address behavior and if and when an FBA was needed.

Applicable Regulations and Conclusions

The Kansas State Department of Education at K.A.R. 91-40-8(f); has established a 60 school-day timeline for conducting the initial evaluation consistent with federal regulations at 34 C.F.R. 300.301(c). The timeline starts upon receipt of a written parental consent to conduct the evaluation and ends with the implementation of an IEP if the child is found eligible for special education services. Within 60 days of the date the district must (1) conduct the evaluation, (2) determine eligibility and conduct an IEP meeting if the child is eligible, and (3) implement the child's IEP.

In this case it is premature to determine if the district is in compliance. From the evidence it is found that the date marking the start of the evaluation began February 9, 2023 and ends May 17, 2023 (60 school days from the start date). The meeting for the evaluation and eligibility meeting is scheduled for May 16, 2023.

The Kansas Special Education Process Handbook states, "If the child's parents request an evaluation of the child during the period of suspension or expulsion or other disciplinary action, the evaluation must be conducted in an expedited manner. No timeline is specified with regard to an expedited evaluation. However, in this context, the term 'expedited' suggests the evaluation should be concluded in a shorter time frame than a normal evaluation" (p. 203).

In this case the student was not currently under suspension at the time the parent made a request for a special education eligibility evaluation so the district was not under any obligation to expedite the evaluation. It is noted that the district did discuss completing the evaluation more quickly than the allowed 60 school day timeline, but was not able to complete it earlier.

K.S.A. 72-3428. and K.A.R. 91-40-8 describe the role of the parent in the initial evaluation as: 1) providing previous or outside evaluations and information to the initial team review for the purpose of developing an evaluation plan, and 2) contributing input to the team as to additional areas needed to determine whether the child is an exceptional child and the educational needs of the child. In this case, it is found that the parent provided medical information from Children's Mercy hospital previously and provided specific areas for evaluation to determine if the student had a learning disability. The parent did not contribute with the evaluation team to a plan but was contacted several times during the evaluation as results were found to discuss additional areas to evaluate. Again, it is not possible to determine fully the role of the parent in the evaluation process since the timeline is still ongoing.

Federal regulations at 34 C.F.R. 300.304 through 300.306 specify that the evaluation be sufficiently comprehensive to identify all of the child's special education and related services needs.

In this case the parent requested an evaluation to consider if the student had a learning disability. The evaluation plan was appropriately designed to answer that question. As well, the evidence showed that the evaluation team had broadened the plan to collect other data to determine if any other disability may be present. Further, the team had revised their plan in light of initial evaluation to pursue other areas such as autism. At this point,

As with the timeline, it is premature to determine if the evaluation is comprehensive since an interview with the district staff revealed that the draft MTR report is not complete.

Based on the foregoing, according to IDEA and Kansas special education regulations it is not substantiated that the district failed to complete a comprehensive special education evaluation for a child with a suspected disability that involved the parent, addressed all areas of suspected disability including an FBA, within 60 days.

> ISSUE THREE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, specifically secluding the child, and failure to provide access to appropriate instruction, participation and progress in the general curriculum.

Positions of the Parties

The complainant alleged that the district isolated the student for an unknown number of days of in-school suspension (ISS) and that the student was not provided appropriate instruction or her current educational (504) accommodations in these conditions, despite her many pleas for instructional time, accommodation, and proper documentation of discipline events for her child.

The district replied that it did provide the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, did not seclude the student, and provided access to appropriate instruction, participation and progress in

the general curriculum. The district responded that the student had received 7 days of out of school suspension (OSS) during the 2022-2023 school year and the rest of the suspensions were in-school (ISS). During that time the student had access to the general curriculum and was allowed to progress in the general curriculum. A Safety Plan was in effect since the first semester and was applied as appropriate. Further, the student was afforded her 504 accommodations once that plan was developed and implemented. A full-time paraeducator staffed the ISS room and implemented the Student's 504 Plan as well as the Safety Plan, as evidenced on the Support Staff Visitor Log. To reassure the parent that the student's 504 plan was in effect in ISS the school administrator delivered a hard copy of the plan to the ISS Para and explained it to him. As well, the school administrator provided follow-up emails with the 504 accommodations and reminders to the student's teacher to share classroom work with ISS to ensure the student could continue to make progress in the general curriculum. The Assistant Principals (A.P.s), both licensed teachers, were given the charge to serve as the supervising teachers of the ISS room, but students assigned to ISS, including this Student, were allowed to return to their classrooms for initial instruction by the content teacher (as well as for assessments), and then return to the ISS room to complete assignments with the assistance of the Paraeducator (who is a classified employee funded through special education funds, which means that he is required to participate in a certain amount of mandatory training hours to support students each year) under the supervision of the A.P.s.

Further, the district responded that the student was not secluded; in fact, the ISS room is a general education setting in that it serves both students without disabilities as well as students with disabilities whose educational placements include being served with peers without disabilities, so it is the least restrictive environment in the school with regard to access to peers. The only times the Student was not with other students in ISS is if there were no other students assigned to ISS when she was and/or when the student was exercising her right to utilize her 504 accommodations that allowed her to go to an alternate location.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #259.

The findings of Issues One and Two are incorporated herein by reference.

The Children's Mercy report shared with the district on November 2, 2022 showed the student had diagnoses of post traumatic stress disorder, headaches in a pediatric patient, victim of childhood bullying, anxiety and obesity.

The district reported and documentation showed that the child had a documented disability, specifically anxiety, depression, and obesity on December 7, 2022 when the school team and parent met to develop a 504 plan for the student.

The district reported that they first considered the student as having a suspected disability upon receipt of the parent request for a special education evaluation on January 17, 2023 and they subsequently agreed to evaluate the student by providing prior written notice of intent to evaluate and request for consent, signed by the parent on February 9, 2023.

The district reported and student attendance documents showed that the student had many absences from school reported as illness, unknown reasons, unexcused-truancy, medical, and removal designated by the principal.

Number of days the student was assigned Out of School Suspension (OSS)

Three days of OSS were assigned after the parental request to evaluate on January 17, 2023. The 2022-2023 school year attendance report (ending on May 5, 2023) provided by the district showed that the student was suspended out of school for seven days (October 7, 2022; October 18, 2022; October 19, 2022; October 20, 2022; April 27, 2023; April 28, 2023; May 1, 2023).

Number of days the student served in school suspension (ISS)

According to the 2022-23 student attendance history report, the student served 11 days of in school suspension (ISS) following the January 17, 2023 request for a special education evaluation (February 10, 2023; March 23, 2023; March 28, 2023; March 31, 2023; April 3, 2023; April 6, 2023; April 18, 2023; April 20, 2023; May 3, 2023; May 4, 2023; and May 5, 2023) and 5 additional days prior to the January 17, 2023 request for a special education evaluation (October 27, 2022; November 4, 2022; November 8, 2022; November 9, 2022; November 14, 2022).

Additional information later reported by the district added the following ISS dates previously not reported on the attendance report: December 12, 2022; December 14, 2022, and April 21, 2023. Therefore, seven days of ISS were confirmed before the

request to evaluate on January 17, 2023 and 12 confirmed dates of ISS followed the request for a total of 19 days of ISS served by the student.

The parent reported and documents showed that a third type of disposition for discipline incidents was used by the school: "RR" (Restorative Practices) and "RRR." The district staff acknowledged that RRR is equivalent to ISS and RR by period assigned by the assistant principal is served in the ISS room and documents showed that the office areas were also used as locations for RRR/ISS.

A review of emails, Disciplinary Action Forms and the Student Discipline Profile, the Assistant Principal assigned RR by class period on these dates: February 3, 2023; February 6, 2023; two unspecified dates following incident #39714 on March 8, 2023; and two unspecified dates following incident #45708 on April 14, 2023. In additional documentation, the district also reported that the student served two periods of "ISS" on February 3 and February 6, 2023 in the Assistant Principal's Center (office and conference room). These six dates follow the request to evaluate on January 17, 2023, and only two of them can be documented as served.

The district reported that due to the student's many absences from class, ISS by period was used in addition to ISS by day. It cannot be fully determined from the period attendance documents how many of the student's reported unexcused absences (by period) were due to being late to class or due to the student being assigned by period to ISS or RR. The ParentVUE screenshot provided by the parent showed that on April 20, 2023 (an ISS day) the student was listed as unexcused-truant for the first 4 periods, in ISS for the middle 2 periods and unexcused-truant for the last 2 periods in the same day. On April 19, 2023, in ParentVUE she was listed as having ISS for one period, on a day when she was not listed as in ISS on the student attendance report. However, the Support Staff log showed that she "left ISS" for a break in the SCC on that day. On April 3, 2023 (an ISS day on the attendance history report), she was listed as in ISS for one period of the day and emails showed that she was in the Assistant Principal's office 7th through 9th period, when her attendance was coded Principal Approved in Parent View and PRN on the attendance report.

From the attendance reports and information about various discipline options, after the request to evaluate on January 17, 2023 the student was suspended an additional 3 days, served ISS by day on 12 days for a total of 15 days of suspension. The student had ISS by period on at least two additional days for a total of 17 days of removal from class.

Access to Instruction

The district reported and the parent agreed that the student did not qualify nor receive special education services during the student's assignment to ISS.

The district reported and the parent agreed that the student had a 504 plan in place beginning December 7, 2022. The district and parent agreed that the student's 504 plan was reviewed and updated on January 30, 2023 and February 9, 2023.

The district response reported that ISS is not a removal from instruction as students are provided access to their classroom instruction, via teacher handouts or Google Classroom and that students are afforded their 504 accommodations and special education services. The district reported that "work was collected from all teachers, and support staff helped with motivation and work completion." The student had access to assignments via an electronic classroom teaching platform and received emails from teachers.

A review of emails and assignment documents from 4 of the student's teachers (found in the parent's FERPA requested documentation) dated November 17, 2022 to March 3, 2023 found two of the 20 entries co-occurred on or the day before a day spent by the student in ISS. Emails to the student provided by the district showed: (a) 16 emails from the science/advocacy teacher, one of which occurred on an ISS day, and (b) 18 academic emails from the math teacher (2 on an ISS day, 1 copied to ISS teacher on an ISS day, 2 copied to the ISS paraeducator on days when the student was not in ISS).

The district reported that the student's 504 plan was provided to the special education paraeducator who assisted in the ISS room and administration instructed the paraeducator to follow the student's 504 plan accommodations during ISS. No documentation or student assignments were provided demonstrating 504 accommodations were provided by the ISS paraeducator nor that student work was completed during ISS periods.

Student sign in sheets showed the student signed into the ISS room on seven days: October 27, 2022; February 10, 2023; March 23, 2023; March 28, 2023; March 31, 2023, April 18, 2023, April 20, 2023, May 3, 2023. Attendance according to the sign in sheets on those days showed 6 to 10 students in the 6th to the 8th grades were in ISS those same times.

Documents showed that the student was remanded to the Assistant Principal's office, front office or conference room to serve days of ISS. An email showed the student was in the office on November 14, 2022 for at least one period of the day. According to the district, the student served the following days of ISS in an administrator's office or conference room: December 12, 2022; December 14, 2022; April 21, 2023. On December 14, 2022, a significant behavioral incident occurred in this location, leading to the student's assignment of 5 days of ISS in January, 2023.

On November 22, 2023 in an email to the school administrators, the student's teachers and parent, a teacher expressed concern for the student's failure to follow hall pass procedures and her excessive absences, adding: "with that being said, she seems engaged but lost. All the assignments have been posted on Google Classroom and she has access to the curriculum online but missing directed instruction prohibits her from doing well on assignments." This email followed four out of school and five in school suspensions. At the end of the second quarter grading period (December 16, 2022), the student's grade point average was reported as 1.25.

The parent reported and documents show that she actively notified the district of her concerns related to instructional time being lost, whether accommodations were provided, and whether they were effective. An email to building administrators on January 10, 2023 and an emailed letter to the District's General Counsel on January 12, 2023, are examples of this communication that occurred both before and after the request to evaluate.

Access to accommodations

The district reported and documents showed that on one occasion (November 8, 2022) the student worked with the social worker in the Student Care Center (SCC) during ISS. Further document review showed that the student visited the SCC to see the social worker on 25 days and 27 occasions, four of which overlapped with ISS days in the attendance log (one before and three following the request to evaluate). The student also visited the nurse on one of the same ISS days she visited the social worker.

The district reported and documents showed that a 504 Team meeting occurred on February 8, 2023 and after discussion of accommodations at that meeting, a shared google doc was created to document the student's visits to the SCC and communicate them to the parent.

Applicable Regulations and Conclusions

There are provisions in IDEA that pertain to whether a child who has not yet been determined to be eligible for special education can assert the protections under IDEA. First, K.S.A. 72-3436(b) states that "A school district shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred: (1) The parent of the child has expressed concern, in writing, to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child, that the child is in need of special education and related services; (2) the parent of the child previously has requested an evaluation of the child; or (3) the teacher of the child, or other personnel of the school district, previously has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of such school district or to other supervisory personnel of the district."

In this case, the parent requested a comprehensive evaluation for special education for the student on January 17, 2023, and at this time, the district was required to follow the provisions of IDEA with regard to discipline of this child. Although the district was provided information prior to the January 17, 2023 evaluation request that the student had a disability, it was determined by the student's family and school-based team in December 2022 that the student had a disability that could be met with through a Section 504 plan. Therefore, the date of January 17, 2023 is accepted as the date on which the district was required to follow the provisions of IDEA with regard to discipline of this child.

Second, in-school suspension may be used for a child in this circumstance. The question is whether the use of ISS constitutes a disciplinary removal of the child. Three factors are required in order for ISS to be excluded from the 10 day limit on disciplinary removals from school. These are: (1) the child has the opportunity to appropriately participate in the general curriculum; (2) the student continues to receive the services specified on their IEP; and (3) the student participates with nondisabled children to a similar extent as they would in their usual school placement. From *Questions and Answers: Addressing the needs of children with disabilities and IDEA's discipline provisions* (OSEP, July 19, 2022) : "In the Analysis of Comments and Changes accompanying the Part B regulations, the Department explained: 'It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in 34 C.F.R. § 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the

services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy.' The explanation concludes by indicating that whether an in-school suspension would constitute a day of suspension would depend on the unique facts and circumstances of each case. 71 Fed. Reg. 46715 (Aug. 14, 2006)" (p.11).

The Kansas Special Education Process Handbook further explains these factors stating that "a school day of in-school suspension should not count as a school day of suspension for services or change of placement purposes if, during the in-school suspension, the child is afforded an opportunity to: (a) continue to *appropriately progress* [italics added] in the general curriculum; (b) continue to receive the services specified on his or her IEP; and (c) continue to participate with children without disabilities to the extent they would have in their current placement. The assumption is that school districts may use in-school suspension for children with disabilities just as they would for children without disabilities. . . On the other hand, if in-school suspension is a place where children are held without opportunities to progress in the general curriculum, receive IEP services, and participate with children without disabilities to the same extent they would have in the current placement, the days do count as school days of suspension for change of placement and provision of services purposes" (p. 205).

In this case, as part of the general education program at this middle school, electronic instructional platforms were used to track assignments and to provide some activities online. Direct instruction was provided in classrooms by teachers. It is found that the student had access to her own email account and the electronic platform materials. It is found that teachers expressed concern about the student's absences and missed class work. Although her teachers sent many emails to her informing her of her missing school work and urging her to complete it, there is no evidence that they provided direct instruction to her during periods of ISS, nor is there evidence that any more than a few assignments were provided to the ISS paraeducator so that he could directly supervise her participation on the assignments. Finally, there were no supervisory notes that showed the ISS paraeducator regularly provided instructional support or accommodations to this student.

It is found that on or before January 10, 2023, the parent sent emails to district administrators expressing her concern about missed instruction during the student's disciplinary removals, reiterating this concern in a letter to the District General Counsel on January 12, 2023. The age of the student (11 years old at the time) must be taken into account when determining if an electronic classroom platform is adequate for her to

appropriately participate or progress in the general curriculum as required in Kansas. Further, her grades indicated that she continued to fail to progress in the general curriculum across the first three quarters of middle school, unlike her elementary school performance. In this case, opportunity to participate and progress in the general curriculum was not met for the days the child spent in ISS in any of the three possible locations provided by the district.

Because eligibility for this student has not been determined the student does not have an IEP or a special education placement. The student does have accommodations for a disability under Section 504 in her current general education placement to address the second and third factors. It is clear that the district made efforts to ensure that the student's 504 accommodations were followed during her regular school placement. Documentation provided to the investigators showed one accommodation (nurse visit) occurred on two occasions during ISS and another (social worker visit) occurred on four occasions. Other accommodations cannot be determined to have taken place.

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district failed to provide the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, specifically failure to provide access to appropriate instruction, participation and progress in the general curriculum.

Issue Four

> ISSUE FOUR: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow IDEA disciplinary procedures and provide the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, specifically administrator statements that the child's behavior was not related to her disability without proper review, failure to hold a manifestation determination hearing; and failure to conduct an FBA leading to a BIP.

Positions of the Parties

The complainant alleged that the school has not followed the IDEA discipline procedures and that her child was denied the protections of IDEA during the time when she was being evaluated for special education. The parent alleged that the student was removed from instruction more than 10 days through out of school suspension (OSS), in school suspension (ISS), informal removals, and administrative leave without a manifestation

determination, and the parent asserted that these removals constituted a change of placement.

The complainant alleged that at least one administrator stated an opinion that the student's discipline problems were not related to her disability. The complainant alleged that upon two occasions, manifestation determination reviews were scheduled and canceled by the district.

The complainant alleged that the district did not follow the IDEA discipline provisions to afford her parental rights or to allow her child to remain in her general education classroom until a change of placement could occur at the time of evaluation.

The district responds that it "followed IDEA disciplinary procedures and provided the protections of IDEA during suspensions (in and out of school) for a child having or suspected of having a disability, no administrator made statements that the student's behavior was not related to her disability without proper review, the school did not fail to hold a required manifestation determination hearing or to conduct a Functional Behavioral Assessment (FBA) leading to a BIP…"

The district also responded that the school applied regular discipline procedures including ISS and OSS and that it does not supply additional services to students without disabilities who are similarly removed to an interim alternative educational placement. The district responded, "The school did address the Student's behaviors in several different ways, including but not limited to a School Safety Plan, 504 accommodations, restorative practice, weekly sessions with the school SW (social worker), and the CST (child study team) continued to discuss the Student's behavior, applied Tiered interventions, and is conducting a comprehensive special education evaluation." The district also responded that ISS is considered a general education setting and that the use of ISS did not count toward school removal because the student was afforded 504 accommodations, she returned to the classroom for initial instruction and assessment by teachers during ISS, and ISS is supervised by a special education paraeducator. The district responded that the students' assignments were provided to her.

The district also responded: "The Student had two incidents in October totaling 4 days of OSS, and one incident in April for 3 OSS days, for a total of 7 days of OSS removals from school per the 2022-2023 Student Discipline Profile, and as previously explained, these removals from school did not constitute a change in placement for the student as per K.S.A. 91-40-33. For this reason, no IDEA protections were necessary with regard to

services being provided for this (504) Student not-yet-eligible for special education during removals from school."

And, the district continued: "The school did not fail to conduct an FBA, leading to a BIP. The Student's 504 Team never determined that the Student required a Behavior Intervention Plan (BIP). The General Ed Student Contact Log shows that school administrators spoke the Parent after winter break on 1/4/23 regarding a 12/14/22 incident where the Student received ISS for 5 Days for Threat-Intimidation, and was to serve these ISS days on (1/9/23 –1/13/23) Pending outcome of MDR (Manifestation Determination Review) they told her they would be scheduling to determine if the Student's disabilities under 504 caused her to engage in the behavior subjected to disciplinary action.. . . Administration requested an MDR for this student after a teacher was hit during a physical altercation in class. Parent sent an email on 1/10/23 containing a records request as well as asking about the Student not being allowed to attend classes until the MDR was held per her 1/6/23 phone conversation with administration. . ."

The district response continued, "In a letter from the district's General Counsel to Parent dated 1/12/23, he stated that the MDR, scheduled for 1/13/23, was canceled. The letter left the door open for possible disciplinary consequences, and an MDR for subsequent offenses in the future. The school Administrator emailed Parent on 1/13/23, stating that now that the MDR was canceled that the Student would resume her regular schedule when she returned to school. The next school day, 1/17/23, the Parent emailed her request for a comprehensive special education evaluation for the Student. The district has a practice is that, once a Parent requests that their student be evaluated for special education, the district may still impose disciplinary consequences, but does apply them in ways to protect the rights of the student as not-yet-eligible in the event that a possible, yet-to-be-determined disability may be the cause of a behavior that is subjected to disciplinary action. And, although a school is not required to put disciplinary proceedings on hold until an evaluation is completed, it may, and the district has a practice of waiting to conduct MDRs when there is an open special education evaluation until the decision of eligibility is determined in order to then determine in an MDR if the behavior that was subjected to disciplinary action was caused by their disability."

Finally, the district responded that "An MDR has not been required for this Student. The student has not been removed from school for more than 10 consecutive days, or received removals that have accumulated to more than 10 school days, and has shown no pattern of removal constituting a change of placement, and therefore, the school did not fail to hold an MDR because an MDR was not required (34 C.F.R. 300.536(a)(1)(2) and

300.530(c)). Because no MDR was required, the school also was not required to conduct an FBA and was not required to develop a BIP; instead, the school had the Student resume their previous schedule in general ed classes. The Principal denies that administration made statements that the student's behavior was not related to her disability without proper review."

Findings

The findings of Issues One, Two and Three are incorporated herein by reference.

The parent reported that an administrator stated that the student's discipline problems were not related to her disability. The district reported the school administrator did not make this statement, but that there was a discussion at the initial 504 eligibility meeting (December 7, 2022) that the student's anxiety should have been alleviated and no longer require accommodation of the school safety plan that separated the student from the known bullying opportunity.

The parent and district agreed that the district scheduled and subsequently canceled two Manifestation Determination Reviews on January 13, 2023 and March 28, 2023. The district reported that it has an informal policy of not holding MDRs for students undergoing evaluation for special education eligibility until after the evaluation is complete and eligibility determined, which accounts for the March 28, 2023 MDR being canceled.

The parent stated in an email to the district on April 28, 2023: "From March 27th to date you have assigned [the student] 23 suspension days, 20 days in school suspension and 3 days out of school suspension days." Document types provided by the parent and the district used to determine the number of suspension days assigned to the student are: Disciplinary Action Reports (DARs), Student Discipline Profile (SDP), Period Student Profile, the District Responses, and [Student Name] Attendance History Report. These documents show 35 unduplicated days of ISS assigned in the current school year as of May 5, 2023 with 7 days of suspension out of school, for a total of 42 days suspension.

Before January 17, 2023:	After January 17, 2023:
ISS: 11 days assigned	ISS: 24 days assigned
OSS: 4 days assigned	OSS: 3 days assigned

Number of Days the Student was Removed from Class

Of the days assigned after January 17, 2023, 17 days can be documented as being served as in or out of school suspensions: February 3, 2023, February 6, 2023, February 10, 2023; March 23, 2023; March 28, 2023; March 31, 2023; April 3, 2023; April 6, 2023; April 18, 2023; April 20, 2023; April 21, 2023; April 27, 2023, April 28, 2023; May 1, 2023; May 3, 2023; May 4, 2023; and May 5, 2023.

The chart below showed the dates, dispositions assigned and documented removals subsequent to the January 17, 2023 request to evaluate. Student Discipline Profile is abbreviated as SDP.

Date	Incident	Disposition	Served
1/30/2023	#30669 Disruptive Beh.	2 days Restorative Room 2nd Period	ISS 2/3/23, 2/6/23
2/8/2023	#33305 Disruptive Beh.	Detention (turned to ISS 2/9/23)	
2/10/2023	#34129 Insubordination	no disposition listed in SDP	ISS 2/10/23
2/28/2023	#37452 Obscene Beh.	Detention 3/1/23	
3/8/2023	#39714 Obscene Beh.	2 days "Restorative Room" from class	
3/9/2023	#40155 Threat Intimidation	ISS 3/23/23	ISS 3/23/23
3/22/2023	#40849 Insubordination	ISS 3/23/23* duplicate	
3/24/2023	#46025 Threat Harassment	ISS 2 days 4/17/23, 4/18/23	ISS 4/18/23
3/27/2023	#41828 Fighting	ISS 6 days: 3/27/23, 3/28/23, 3/29/23, 3/30/23, 3/31/23, 4/3/23	ISS 3/28/23, 3/31/23, 4/3/23
3/27/2023	#41744 Obscene Beh.	ISS 2 days 4/4/23 and 4/5/23	
4/3/2023	#43944 Obscene Beh.	ISS 2 days 4/6/23 and 4/11/23	ISS 4/6/23
4/4/2023	#43974 Obscene Beh.	ISS 2 days 4/19/23 and 4/20/23	ISS 4/20/23
4/14/2023	#45708 Disruptive Beh.	"Restorative Room" from class 2 days 4/21/23* duplicate, 4/24/23	
4/20/2023	#47212 Not Following Directions	ISS one day 4/21/23* duplicate	ISS 4/21/23
4/26/2023	48987 Physical including Battery on Pupil	OSS 3 days 4/27/23-5/1/23 ISS 2 days, 5/2/23, 5/3/23	OSS 4/27/23, 4/28/23, 5/1/23 ISS 5/3/23
4/26/2023	#48794 Obscene Behavior	ISS 1 day, 5/4/23	ISS 5/4/23
4/26/2023	48820 Disruptive Behavior	ISS 1 day, 5/5/23	ISS 5/5/23
4/26/2023	48863 Disruptive Behavior	ISS 1 day, 5/8/23	
		TOTALS	3 OSS 14 ISS

The district reported that it found no pattern in suspensions that could be considered a change of placement. When asked, the district representatives interviewed from the student's middle school did not identify when a meeting to determine a pattern was held, saying it was deferred to the evaluation team. The evaluation team reported they did not have this discussion.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.534(a) require a public agency to provide the IDEA disciplinary protections to a student not yet eligible for special education and related services who has engaged in behavior that violated a code of student conduct if the district had knowledge that the student may be a student with a disability prior to the behavior that resulted in the disciplinary action.

Federal regulations implementing the IDEA at 34 C.F.R. 300.534(b)(2) state that a public agency is deemed to have knowledge that a student may have a disability if the parent has made a request for a special education evaluation.

Federal regulations implementing the IDEA at 34 C.F.R. 300.536 state that a removal of more than 10 consecutive school days or a removal of more than 10 cumulative school days when a pattern of behavior exists constitutes a disciplinary change of placement. School staff make the determination if a pattern of behavior exists.

Federal regulation implementing the IDEA at 34 C.F.R. 300.530 require the public agency to determine if the behavior that violated a code of student conduct resulting in a disciplinary change of placement is a manifestation of the student's disability. If the determination is that the behavior that resulted in the disciplinary action is not a manifestation of the child's disability, the student may be disciplined in the same manner as any other student without a disability. However, if the determination is that the behavior that resulted in the disciplinary action is a manifestation of the child's disability, specific procedures must be followed and services must be provided to the student.

In this case, the parent made a request for a special education evaluation of the student on January 17, 2023 which put the district on notice that the student may be a child with a disability and eligible for the IDEA disciplinary protections.

Subsequent to that date, the student was suspended for a total of 17 days over a period of 69 possible school days or 25% of the time. Looking through the semester, the

percentage of suspended days increased. From March 28, 2023 till May 5, 2023, the student was suspended 13 of 28 school days, or 46% of the time. From April 18, 2023 to May 5, 2023, the student was suspended 9 of 14 school days or 64% of the time.

However, there is no documentation that the district considered whether or not the more than 10 cumulative days of suspension constituted a pattern of behavior resulting in a disciplinary change of placement.

When determining whether a disciplinary removal constitutes a change of placement due to a pattern of removals, school officials have broad discretion. Federal regulations, at 34 C.F.R. 300.536(b), state that the district determines on a case-by-case basis whether there is a pattern of removals that constitute a change of placement, and that determination by the district is subject to review only through due process and judicial proceedings. Thus, it is the district that determines whether a disciplinary removal constitutes a pattern of removals that result in a change of placement, and that decision is not reviewable through the complaint process. This complaint report does not disturb that discretion because the conclusion stated below is not that the student's behavior constituted a pattern that resulted in a change of placement. Rather, the conclusion below is based on the finding that the district did not make any determination regarding whether the removal on December 20 (the 11th cumulative day of removal) constituted a pattern that resulted in a change of placement. Had it made such a determination, this complaint investigator would not have authority to review that determination. The finding of a violation results from the district's failure to make the required determination when the 11th cumulative day of removal occurred, after the parent gave consent for an initial evaluation.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to follow the IDEA disciplinary procedures for a student suspected of having a disability, specifically by not determining if more than 10 cumulative days of suspension constituted a pattern of behavior resulting in a disciplinary change of placement following the student's 11th cumulative day of suspension on April 21, 2023.

ISSUE FIVE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to maintain, provide accurate and/or correct records of discipline actions of a child having or suspected of having a disability.

Positions of the Parties

The complainant alleged that the district failed to provide disciplinary records in a timely manner and that records received were contradictory and erroneous. As a result of the record keeping the student's needs were not met by the school. The parent alleged that she repeatedly asked the district for information and documentation about discipline events and investigations.

The district replied that it did maintain accurate records of discipline actions for the child and provided those to the parent during the past twelve months. During the past twelve months, records of discipline for this student were collected and provided from three schools. The district contended that staff in each of these schools knew the importance of maintaining not only for disciplinary purposes, but also to use as part of Child Find and in meeting the needs of this student whether or not she is found to be eligible for special education.

Findings

The findings of Issues One, Two, Three and Four are incorporated herein by reference.

The district reported that during the past twelve months three schools had responsibility for collecting and maintaining behavior and discipline records for the student, her elementary school, her current middle school and the middle school that conducted the special education evaluation.

The district acknowledged that the student was found eligible for 504 accommodations on December 7, 2022.

The district reported in their response to this complaint that at her elementary school there were no instances of ISS or OSS. "There is only one record in the Student's general ed student contact log in the time period of April 18, 2022, to the end of the school year, which lists a face-to-face meeting for Restorative Practice on April 27 for a threat-intimidation violation on April 26. The parent and the district agreed that the student

had a positive educational experience at the Elementary school, where she was supported through self-esteem enhancing activities and restorative practices when student conflicts occurred.

The district response reported that the student's current middle school has six different ways they addressed student behavior: (a) Conference with the Student, (b) Conference with Student and Parent, (c) Restorative Practice, (d)Detention, (e) Suspension In-School (ISS) and (f) Suspension from School (OSS).

To collect and maintain accurate records the school reported that they used a Student Discipline Profile to show incidents that resulted in one of the six school discipline practices being applied. For each incident, the school reported they kept separate records, called Disciplinary Action Forms. The school reported they also kept a General Ed Student Contact Log, which contained records of different types of communication with the parent regarding the student, including discipline incidents. An additional record included the CST Agendas and Meeting Notes, which records information about students who were brought to the school's Child Student Team (CST) for problem-solving learning or behavior challenges. Finally, the district reported another log, named the Support Staff Visit Log, was built for this student following the February 8, 2023 Section 504 team meeting. It was a spreadsheet for support staff access created and shared with the parent, to document when the student accessed the Student Service Center (SCC) to see the social worker or nurse as her accommodations specified.

The district response reported that records for behavior and discipline from the second middle school by staff who conducted the student's evaluation were in the CST agendas and notes and/or were written into the evaluation report, as appropriate.

The district reported that the parent had continuous access to student behavior and discipline via the Support Staff Visit Log continuously following the February 8, 2023 504 meeting. The Support Staff visit Log recorded events dated between February 8, 2023 and May 5, 2023. Although the log recorded interactions related to the student requesting her 504 accommodations, it does not provide disciplinary records like the Student Discipline Profile or the individual Disciplinary Action Reports. One record, dated March 31, 2023 indicated the student not wanting to report to ISS.

The district stated and documentation showed that the student was discussed at Child Study Team meetings at the evaluation team school on the following dates: January 17, 2023; January 24, 2023; February 3, 2023; February 7, 2023; March 21, 2023; March 28, 2023; April 4, 2023; April 11, 2023; and April 18, 2023. Content of discussion related to

(a) coordinating the evaluation efforts between the two middle schools, and (b) the student's disciplinary events.

The building staff reported that one individual was the conduit of information from the school of residence with the evaluation team, and that she was not made aware of discipline dispositions for the student unless they were shared with her by the student during a visit to the SSC.

Accuracy of Disciplinary and Absence Reporting

The district reported and documentation showed that Disciplinary Action Reports (DAP) and a Student Discipline Profile (SDP) were two ways that the school kept documentation of their discipline of the student. The district provided two versions of the period attendance report (one that shows ISS by day or period which does not include the entire school year, and one that does not show ISS as a code for the entire school year). The district provided an attendance history report for the student that showed some but not all days of ISS served by the student. The district also supplemented their initial response by asking building staff about the specific locations where the student served ISS.

A reconciliation of these discipline records with the attendance records and with the district's response pointed out numerous discrepancies. This list of discrepancies illustrated the range of discrepancies rather than providing an exhaustive listing of discrepancies found.

- Additional days of ISS were reported as served in the front office according to the building administrative staff. On December 12, 2022, the student served ISS in the front office and there was no record of the student being assigned to ISS in the Student Discipline Profile or attendance reports. On December 14, 2022, ISS was served in the front office area but it was not a day of ISS according to attendance reports. It should be noted that on December 14, 2022, incidents #25613 and #26223 occurred, for which 5 subsequent days of ISS were assigned to be completed in January. December 12 and December 14, 2022 preceded the request to evaluate.
- On April 20, 2023, the student reported to the ISS room, according to the sign in log provided. According to her SDP, she was assigned to ISS on this day. On the attendance report, her absence was coded as truant, unexcused for 6 of the 8 periods of the day.

- On April 21, 2023, school staff reported that the student served ISS in an office area. The SDP showed this as a date when RR and ISS were assigned. However, in the attendance documents the student was reported as truant/inexcusable.

ISS by Period Reporting

A reconciliation of the discipline records with attendance records for ISS by period reporting again pointed out numerous discrepancies. This list of discrepancies below illustrated the range of discrepancies rather than providing an exhaustive listing of discrepancies found.

- The parent and district documentation agreed that the student was assigned to period-based ISS on February 3, 2023 and February 6, 2023 for the second period, which she served in the Assistant Principal Center. The student was marked truant-unexcused on the period attendance profile for the second period on these dates.
- The district reported that according to front office staff, "since the start of 2nd semester, [the student] has served her RR in one of the office areas (APC, SSC, or front office)." The district reported that the practice is that one period of RR generally followed a classroom incident on the next day and the student returned to the class on the subsequent day.
- From district documentation there were two days of RR assigned after an incident (#39714) on March 8, 2023 and two days after an incident (#45708) on April 14, 2023. It is unclear from the school's attendance documentation if these dates were served by the student, as the attendance record by period interchangeably used unexcused absences with the previous RR and ISS by period assignments. No other documentation was provided to the complaint investigator to account for these period RR or ISS assignments.
- On April 3, 2023, the student period attendance report shows that the student served ISS for the 6th period. An email from the administrator said that the student was in the AP office for the 7th - 9th periods, and the period attendance report shows those periods as PRN. A district reply to the investigator's inquiry reported that the student's grandmother picked her up from school on that day. The parent reported "4/3/22- [the student] was not picked up by my mother. Per [the student]'s support staff log [the student] was in the S.S. Office Ms. [Social Worker] office needing a break from ISS. Please see attached [the student] Support Staff Log that the staff document in regarding [the student]. Also that day in ISS she received write ups that resulted in additional 2 ISS days, please see attached write up. This incident happened at 10:30am per disciplinary action form."

The parent reported that the student was refused entry to the ISS room on three occasions and that this caused anxiety for the student.

- On April 26, 2023, third hour, the student was refused entry to the ISS room and redirected to the Assistant Principal's office for ISS according to the parent. This was not listed as an ISS day in the attendance reports. The student had four incidents recorded in Disciplinary Action Forms on April 26, with the first one at 8:44 a.m., which by the bell schedule was within the third period. It is acknowledged that the investigator was not aware if an alternate order of classes was used on that day.
- On April 27, 2023 the parent reported the student was refused entry to the ISS room and was redirected to the AP office, where she served an hour of ISS. April 27, 2023 was not listed as an ISS day on the attendance reports. The student was suspended according to the period attendance report, beginning mid-morning on April 27, 2023 for the discipline incidents that occurred the day before.
- On May 3, 2023, when refused entry to the ISS room, the front office administrative assistant directed the ISS paraeducator to admit the student to the ISS room. ISS sign in sheets showed her attendance on that day, and the SDP showed that she was assigned ISS on that day.

In emails sent to the district administrators on April 28, 2023 and May 4, 2023, the parent reported these occasions of being refused entry to ISS and asked for a structured environment for the student's ISS rather than the Assistant Principal's office, the front office or the conference room.

When asked how the student and parent were to know where the student was to report for ISS each day, the district reported that the school staff had an overall list of students assigned to ISS and that the student received an email.

The parent reported and emails showed that she requested details on discipline incidents and documentation beginning in October, 2022 and throughout the school year. Examples of such parental requests were found in emails to the school administrator on April 14, 2023 and April 27, 2023. In Issue 3, examples of these requests were found on January 10, 2023 and January 12, 2023.

Applicable Regulations and Conclusions

K.S.A. 72-3436(b) states: "A school district shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred: (1) The parent of the child has expressed concern, in writing, to

supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child, that the child is in need of special education and related services; (2) the parent of the child previously has requested an evaluation of the child; or (3) the teacher of the child, or other personnel of the school district, previously has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of such school district or to other supervisory personnel of the district."

The Kansas Special Education Process Handbook (KSDE) also advises that, because IDEA's discipline provisions extend to a child undergoing an evaluation, it is important to keep screening records to provide documentation if there was a disability suspected at some time in the past. In addition, "school officials should carefully monitor the cumulative number of school days of suspension and make decisions about the effect of imposing additional short-term suspensions. Note that partial days count as full school days. Suspensions should be carefully monitored so that school personnel will be aware of whether another removal will constitute a change of placement. School officials should be addressing the issues of the suspensions prior to reaching the 11th day" (p. 194).

To do so, the school needs to maintain accurate records and straightforwardly document the number of disciplinary removals for a student undergoing evaluation. If the records are inconsistently coded, found in multiple source documents, or erroneously maintained, the school cannot track and count the number of disciplinary removals issued to such a student. This failure to track in and out of school suspensions can have the appearance of an informal removal of the child from their placement without invoking IDEA's disciplinary procedures. Guidance and definition of informal removals has been issued by OSEP in *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA Discipline Provisions* (July 19, 2022).

Further, the conditions of ISS must meet the requirements of 34 CFR 300.530 (d) and KAR 91.40.35 (b)(1) and (c) if the school wishes to use it as an alternative to disciplinary removal (suspension). Administrators must have the tools to ensure school safety and that students with disabilities or who are undergoing special education evaluation are afforded the full protections of IDEA during the evaluation period. Maintenance and use of proper records is necessary to fulfill these functions.

It is found that while the school employed different ways of recording behavior and discipline many errors were discovered when reconciling with attendance records. These discrepancies made it impossible to accurately determine the number of student

disciplinary removals. Further, while school administrators regularly reached out to the parent to report an instance of a behavior the parent was not automatically and routinely provided with the assigned disciplinary action. Further, it is found that the parent repeatedly had to request detailed information on disciplinary actions and then request clarifications for mismatches between the behavior as was originally reported to her from staff administration and the behavior described with the resultant disciplinary action report.

Based on the foregoing, it is substantiated that the USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to maintain, provide accurate and/or correct records of discipline actions of a child having or suspected of having a disability, which it is required to do in order to comply with the "11th day rule" in 34 C.F.R. 300.530(d).

Corrective Actions

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following areas:

A. Federal law at 34 C.F.R. 300.504 (a) and K.S.A. 72-3430(e) require that schools provide a copy of the Parent Rights in Special Education Notice to the parents at least one time in a school year and for the following specific actions: (a) upon a referral or parent request for initial evaluation, (b) upon the first formal complaint or due process complaint filed in a school year, (c) upon a disciplinary removal from school that constitutes a change in placement; and (d) upon parent request.

   In this case, the evidence supports the finding that USD #259 more likely than not did not provide the parent her rights in Special Education upon her request for initial evaluation for her child. It is acknowledged that the parent has since received a copy of her rights.

B. Federal law at 34 C.F.R. 300.530, the U.S. Department of Education Discipline Guidance document dated July 2022 and K.S.A. 72-3436(b) require schools to provide access to appropriate instruction, participation and progress in the general curriculum during suspensions (in and out of school) for a child having or suspected of having a disability.

   In this case, the evidence supports the finding that USD #259 did not provide the

student participation in general education instruction to progress in the general curriculum during in-school suspensions during a special education evaluation.

C. Federal law at IDEA at 34 C.F.R. 300.536 requires that a removal of more than 10 consecutive school days or a removal of more than 10 cumulative school days when a pattern of behavior exists constitutes a disciplinary change of placement. School staff make the determination if a pattern of behavior exists.

   In this case, the evidence supports that the district did not hold a meeting to determine if a pattern existed.

D. Federal law at 34 CFR 300.530(d), the U.S. Department of Education Discipline Guidance document dated July 2022, and K.A.R. 91.40.35 (b)(1) and (c), require that schools be able to count the number of days of suspension applied to students with or suspected of having disabilities. If the records are inconsistently coded, found in multiple source documents, or erroneously maintained, the school cannot track the number of disciplinary removals issued to such a student. This failure to track and accurately count in and out of school suspensions as well as principal designated absences can have the appearance of an informal removal of the child from their placement without invoking IDEA's disciplinary procedures.

   In this case, the evidence supports the finding that USD 259 failed to maintain, provide accurate and/or correct records of discipline actions for the student at her current middle school resulting in her missing substantial general education instruction during her special education evaluation and being denied a manifestation determination hearing due to change of placement.

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 at C.F.R.300.504(a) which require school districts to provide parents with parent rights when requesting an initial evaluation for special education services.
    b. Comply with federal regulations at C.F.R.300.530 which require schools to ensure students participate and progress in the general education curriculum during periods of in-school suspension during evaluation for special education services.
    c. Comply with federal regulations at C.F.R.300.536 which require the district to determine if a pattern of removal exists at the 11th day of removal.

    d. Comply with federal regulations at C.F.R.300.530(d) which require that school districts are able to collect and maintain accurate discipline records for students who are suspected of having a disability

2. By June 30, USD #259 will submit a plan showing how school psychologists, school building administrators and relevant staff will be provided updated guidance on responding to a request for evaluation by providing parental rights to the parent, reviewing those rights with them and documenting their receipt. Within 30 days following the training, USD #259 will submit the guidance and its dissemination to staff to SETS within 30 days of its provision.
3. By June 30, 2023, USD #259 shall submit a plan showing how school psychologists, school building administrators and relevant staff will be provided guidance and training when the district is deemed to have knowledge that the student is a student with disabilities and the discipline protections of IDEA for these students. Within 30 days following the training, USD #259 will submit the guidance, training materials, agenda and list of attendees to SETS.
4. By June 30, 2023, USD #259 shall submit a plan showing (a) its review of communication practices to ensure that parents receive educational records, including timely disciplinary action reports, disciplinary dispositions, and discipline processes relevant to ensuring the IDEA protections for students who have or are suspected of having disabilities; (b) If the district finds a need to improve its practices, district wide training will be provided to relevant staff prior to the beginning of the 2023-24 school year and evidence of training submitted to SETS within 30 days of the training; (c) For the student's school, training will be provided to all administrative and relevant special education staff at the student's school prior to the beginning of the 2023-24 school year, to include the timely provision of disciplinary action reports and IDEA discipline processes to parents of children who have or are suspected of having disabilities, (d) USD#259 shall submit the school's training materials, agendas, and list of attendees to SETS within 30 days of the training.
5. By June 30, 2023, USD #259 shall review the conditions of ISS in the student's school for students who have or are suspected of having disabilities to ensure that adequate supervision for safety, instruction and instructional support are provided, supervised and documented in order for students to participate and progress in the general education curriculum during periods of in-school suspension.
6. Further, the district will monitor the conditions of the building's ISS on a monthly basis for 60 days during the upcoming 2023-24 school year to ensure that it meets the requirements of the above regulations in order for it to be used as a non-disciplinary removal for students who have or are suspected of having disabilities. The district will provide the results of that monitoring to SETS by October 15, 2023.

7. By June 30, 2023, USD #259 shall submit a plan showing (a) how it will review its disciplinary record system to ensure its adequacy to provide building administrators with alerts and summaries of the numbers of in and out of school suspensions being used for students who have or who are suspected of having a disability, (b) if the district finds a need to improve the system, district wide training will be provided (c) if no improvements in the system are found to be needed, training on the proper use of the system will be provided to the student's school and (d) submit the training agendas, materials, and list of attendees to SETS.
8. By June 30, USD #259 shall submit a plan showing how it will provide training to the student's school on IDEA's discipline provisions and their implementation, including the definition of and avoidance of informal removals, the provision of procedural safeguards for parents of children who have or are suspected of having disabilities, the appropriate use of in and out of school suspension, the provision of services to children at the 11th day of removal, and the use of general education or behavioral interventions for students at risk of being identified as having a disability.

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.

Gwen P. Beegle, Ph.D.
Gwen P. Beegle, Complaint Investigator

Donna Wickham, Ph.D.
Donna Wickham, 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 24, 2023

DATE OF REPORT May 26, 2023

This report is in response to a complaint filed with our office by the parent, on behalf of her son, The student. Hereinafter, the student will be referred to as "the student." The parent will be referred to as "the parent." The complaint is against USD #259, Wichita Public Schools, hereinafter referred to as "the school district" or "the district."

Investigation of Complaint

The complaint investigator spoke with the parent on May 3, 2023, by telephone to gather any additional information the parent would like to provide about the complaint.

Also on May 8, 2023, the investigator spoke by virtual conferencing with Dr. Erica Shores and Natalie Aramburu for USD #259, regarding the allegations in the complaint.

The investigator provided both parties the opportunity to submit additional information in writing regarding the complaint and requested specific documentation from the school district. In response, the investigator received email communications from the school district providing requested documents, additional information, and a written response to the complaint. The investigator also received additional information by email from the parent.

In completing the investigation, the investigator reviewed the following:

- IEPs and Related Documents
  - IEP (Amended) dated April 7, 2022
  - Accommodation Usage Form
  - Accommodation Tracker Results
  - Accommodation and BIP tracking report
- Related Documents and E-mails:
  - USD #259 Response to 23FC259-011

- Parent Email 5/8/2023
- USD #259 staff email to parent dated 4/19/2023 and 4/20/2023
- USD #259 BOE Attendance Policy
- Stucky (student) Agenda compiled 22-23
- Stucky Attendance Clerk description of Attendance Process
- Stucky Faculty Handbook
- Stucky Handbook (policies Information)
- USD #259 Student Contact Log
- USD #259 Stucky- Student Communication 4.21 Write up

Background Information

This investigation involves a middle school student. The student has been determined eligible for special education under the category of Other Health Impairment and has diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Autism, and Anxiety. The student has an IEP with a behavior intervention plan (BIP) and currently participates in all general education core and exploratory classes with special education support.

Issues Presented

In the written complaint, the parent presented three issues:

1. The school did not implement the IEP as written, specifically the school failed to implement the Behavior Intervention Plan as written in the most recent IEP dated 4/7/2023.
2. The school did not implement the IEP as written, specifically the school failed to implement the accommodations as written in the most recent IEP dated 4/7/2023.
3. The school did not implement the IEP as written, specifically the school failed to appropriately document the Behavior Intervention Plan and accommodations as written in the most recent IEP dated 4/7/2023.

Issue 1: The school did not implement the IEP as written, specifically the school failed to implement the Behavior Intervention Plan as written in the most recent IEP dated 4/7/2023.

Positions of the Parties

Parent contends that the steps detailed in the Behavioral Intervention Plan (BIP) in the IEP are explicit and sequential steps that are intended to be followed in the order written in the IEP.

It is the position of USD #259 that it did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) and was compliant in that it did implement the Behavior Intervention Plan (BIP) as written in the most recent IEP dated 4/7/2023.

Applicable Statutes and Regulations

As required by 34 C.F.R. §300.101(b)(1), each State must ensure that each eligible child, residing in the State is provided a free appropriate public education (FAPE). Further, 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 §300.320 through §300.324.

Investigative Findings

The following findings are based upon a review of the documentation provided and the phone interviews with parent and district:

1. The student is a student who has been determined eligible for special education and whose parents have provided written consent to the provision of special education services.
2. The IEP included a behavior intervention plan which required several supports and strategies be used with the student, including a think time of approximately 30 seconds to one minute when given a nonpreferred directive, directions in a calm voice with short statements and keeping directions to one or two steps.
3. The IEP included an "Operational Definition of Target Behavior/Description of Peak Behavior (optional)
    - (The student) struggles to regulate emotions and de-escalate when [the student's] emotions are heightened. [The student] has difficulty transitioning between subjects and coping with unexpected changes.
4. The IEP included baseline behavioral data results and quantified behavior based on five categories:
    - Follow-Directions

- On-task
- Remain in class.
- Task completed.
- Self-coping

5. The IEP also included frequency data from the Positive Behavioral Support (PBS) Teacher
   - PBS Teacher documentation 8/14/22 to 2/16/23
     - Eloped – 6
     - Not working – 2
     - Shut down – 2
     - Not following directions – 6
     - sensory issue - 2 (sensitive to smell)
     - Data per semester- first semester vs 2nd semester
     - Picking/blood 1 6 (squeezing finger to make bleed)
     - Not following directions 4 2
     - Shut down 2 1
     - Eloped 4 2
     - No work 1 1
6. The BIP includes the following step-by-step procedures
   - * 1) These steps are to be followed in the order numbered.
     - (Example) When (the student) puts (the student's) head down or covers (the student's) eyes with (the student's) mask/gaiter,
       - Staff should ask (the student) if (the student) needs to go for a walk or take a break 5-10 minutes. Staff should ask (the student) what is wrong, and/or ask if (the student) needs something, or a break to help (the student).
       - When (the student) voices frustration staff should refer to accommodations and behavior plan.
   - * 2) These steps are to be followed in the order numbered.
     - (Example) When (the student) expresses "this is stupid" or "I'm not doing it."
       - Staff should ask (the student) what is wrong, and/or ask if (the student) needs something, or a break to help (the student). When (the student) voices frustration staff should refer to accommodations and behavior plan.
   - * 3) These steps are to be followed in the order numbered.
     - (example) If (the student) continues to refuse to work
       - staff should cut (the student's) assignment requirements down to 30% of the required work. Staff will present "First" (define expectation) - "then" (what comes next, or offer a preferred activity) OR offer choices (e.g.

Would you like to read the book or listen to the audio version? Would you like to use a pen or a pencil?) Refer to accommodations.

- * 7) These steps are to be followed in the order numbered. Staff should follow him and let administration know.
  - (example) If (the student) should leave the classroom without permission.
    - staff should follow (the student) and let administration know.

7. The student's BIP in the IEP refers to an accommodation plan also in the IEP. The accommodation plan includes the following step
   - When feeling overwhelmed/frustrated and/or a need to leave the location, (the student) will show staff the red zones of regulation card and go to the PBS classroom to the Quiet Zone area for (the student's) safe place. Staff will need to contact the PBS room or follow (the student) to make sure (the student) goes there.
     - The rationale of this step is to: "Aid in (the student's) social/emotional growth.
     - The frequency of this accommodation is: ALL INSTANCES
     - The location for this accommodation is: ALL LOCATIONS
     - The duration of this accommodation is: FOR THE LENGTH OF EACH CLASS
8. In the districts response to the 23FC259-011 complaint stated "The BIP contained within the 4-7-23 IEP operationally defines the target behavior as the student struggling to regulate [the student's] emotions and de-escalate when [the student's] emotions are heightened, and that [the student] has difficulty transitioning between subjects and coping with unexpected changes. The Team hypothesized that the function of [the student's] target behavior was seeking attention in order to show that [the student] is struggling and to avoid identifying the root cause of [the student's] feelings, appropriately stating [the student's] problem and regulating self. The Replacement Behavior was operationally defined in the BIP that with all accommodations and strategies in place, [the student] will learn to identify and express emotions/feelings, identify and advocate for what [the student] needs to help [the student], and comply with request for behavior and academic expectations."
9. The email from the teacher to the parent dated 4/21/2023, containing the documentation of the behavioral event in question (4/19/2023) details the behavioral sequence as follows:
   - *Student asked for permission to eat (held up a bag of something). I(teacher) said "no"*
   - *Student said (louder) "I'm starving". I (Teacher) said "there are several kids in here feeling the same way." I (teacher) tried to carry on with talking about store(classroom reinforcement) plans.*

- *Student said "can I go out in the hallway and eat". I (teacher) said “no”. I started to carry on (with classroom plans)*
- *Student got up with his bag of food and walked out of the door*
- *I (teacher)said “that is wasn't a good choice”. (student) went out into the hallway sat down and started eating.*
- *I (teacher) radioed for Administration*
- *Student came into the (classroom) store and expected to return to class. I (teacher) let Staff know (the student) was not welcome back in class this hour.*
- *Student then asked to have store (classroom reinforcement). My (teacher) answer was “no”. I continued on with talking to the other students*
- *Student was yelling at me from behind me. I (teacher)didn't pay attention.*
- *Student went out into the hallway with Staff*
- *I (teacher) went out into the hallway to speak with (the student). I (teacher) asked (the student) "what was the first question you asked me?" (The student) replied "Can I eat". I (teacher) asked (the student) what my (the teacher) response was. (The student) said "no".*
- *I (teacher) asked what was the second question. (The student) said "can I go out into the hallway to eat". I (the teacher) asked (the student) what my response was then. (The student) said "no".*
- *I (the teacher) then asked what did he decide to do. He said "I got up and walked out to go eat". I (the teacher) said "yes, you did. That is called defiance of authority. You will be written up." (The student) asked about store (classroom reinforcement) again. I (the teacher) said “when you make bad choices, you are not eligible for store. 3 other students learned that also today”. (The student) was very emotional and crying. I (the teacher) went back into classroom leaving (the student) with Staff and Administration.*

Analysis and Conclusions

The allegation at issue is that the student’s IEP was not implemented as written for not following the BIP during an incident on 4/19/2023.

The IDEA regulation 34 C.F.R. §300.17(d) requires that special education and related services are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.F.R. §300.320 through §300.324. Additionally, while the IDEA does not specifically state that the IEP must be implemented as written, it does say that services should be available in accordance with the child’s IEP. Under the IDEA, 34 C.F.R. §300.323(c)(2) states that each agency must ensure that, “as soon as possible following development of an IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

It is the position of the district, that the behavior in question was outside the definition of the target behavior included in the BIP section of the IEP required to trigger the steps outlined in the IEP.

The historical data referenced in the IEP as a baseline for the defined target behavior includes identified behaviors of "following directions", "remain in class" and "self-coping". Given both the broad definition of the target behavior developed by the IEP team as "struggles to regulate [the student's] emotions and de-escalate when [the student's] emotions are heightened" and the specific behaviors documented to establish a baseline (following directions, remaining in class (eloping) and self-coping), the specific documented behavior provided by the teacher presents a scenario in which the behaviors do not precisely align with the examples provided in the IEP/BIP and may involve teacher discretion on the timing for BIP implementation. Given the nature of the student's disability, it may be advisable for the district to review best practices in managing classroom behaviors.

In the documentation, when the student did not follow directions (teacher told the student "no") the teacher did not per step 2 "ask (the student) what is wrong, and/or ask if (the student) needs something, or a break to help (the student)." When the student said "I am starving" (voice frustration) the teacher did not per step 2 refer to accommodations and behavior plan. The teacher did not refer to the accommodation for emotional growth and refer to the "zones of regulation cards". When the student asked "to go into the hallway and eat" (eloping, staying in classroom) the teacher did not per step 2 refer to accommodations and behavior plan. The teacher did not refer to the accommodation for emotional growth and refer to the "zones of regulation cards". When the student left the classroom, the teacher DID follow the plan by calling for administration and having staff follow the student into the hallway.

Even if the student did escalate in a manner that triggered the BIP, providing services in accordance with the IEP necessarily does not require implementing the IEP "as written". The Kansas federal district court found, a "district's failure to follow an elementary school student's behavioral intervention plan on three occasions did not cause any lasting harm, [and therefore], the student was not entitled to relief for the implementation failures. *E.C. v. U.S.D. 385 Andover*, 76 IDELR 212 (D. Kan. 2020). In this case, the only behavior that clearly fell under the outlined behaviors in the BIP was the student's elopement from the classroom. As noted above, the teacher did respond to this behavior by following the plan. However, the behaviors preceding the elopement, (the student wanting to eat and yelling), to which the teacher did not respond by following

the BIP, were not clearly defined in the BIP as behaviors that should trigger the plan. Even if the behaviors proceeding the student's elopement were behaviors that arguably might have trigger the BIP responses, a failure in implementing the BIP on one occasion that caused no lasting harm does not amount to a "failure to implement" the IEP.

For the reasons stated above, this investigator finds that the allegation of a violation of IDEA regulations, specifically the failure to implement the IEP as required by 34 C.F.R. §300.323(c)(2) and §300.17(d) is *not* substantiated.

> Issue 2: The school did not implement the IEP as written, specifically the school failed to implement the accommodations as written in the most recent IEP dated 4/7/2023 by marking the student tardy when the student would utilize the extra passing minutes permitted within the IEP.

Positions of the Parties

It is the parent's position that the school repeatedly failed to provide the accommodations as written in the IEP because when the accommodation is implemented, classroom teachers are counting the student tardy or absent.

It is the position of the district that it did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) and was compliant in that it did implement the IEP by providing accommodations as written in the most recent IEP dated 4/7/2023.

Applicable Statutes and Regulations

The IDEA regulation 34 C.F.R. §300.17(d) requires that special education and related services are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.F.R. §300.320 through §300.324. Further, a child's IEP must be accessible to each regular education teacher, and related services provider, and each teacher and provider must be informed of his or her specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports provided for the child in accordance with the IEP. 34 C.F.R. §300.323(d)(1)-(2)(i) & (ii).

Investigative Findings

1. The IEP Dated 4/7/2023 includes an accommodation that allows for the student to have extended transition time between classes:
    a. [The student] will have alternative passing period, leaving 5 minutes before the dismissal bell, getting to [the student's] next class as the bell rings to end class. [The student] should set [an] alarm for 7 minutes before the bell because packing [the student's] things takes time. [The student] will use [the student's] phone as an alarm to remind [the student] of the transition. [The student] should turn it off before putting up [the student's] things. [The student] is only allowed to use it for this purpose only.
2. The IEP Dated 4/7/2023 includes an accommodation that allows for the student to have breaks during classes.
    a. [The student] will be offered a break or will use [a] break card (yellow zone card) during class if [the student] begins to become anxious, frustrated and/or overwhelmed. The break should not last more than 10 minutes. [The student] will need to take the break in the classroom without disrupting others, or out of the classroom with support staff.
3. The IEP Dated 4/7/2023 includes an accommodation that allows for the student to leave the current classroom for breaks.
    a. Non-verbal cue cards to answer questions to show [the student's] feelings when [the student] is not able to verbally express self. Blue - tired/calm, Green – ready to learn, Yellow – getting upset - need a break, Red - leaving to go to PBS room. Words are written on the back of the cards.
4. The IEP Dated 4/7/2023 includes an accommodation that allows for the student to leave the current classroom and access the PBS classroom when [the student] is feeling overwhelmed/frustrated and/or a need to leave location.
    a. When feeling overwhelmed/frustrated and/or a need to leave [the student's] location, [the student] will show staff [a] red zones of regulation card and go to the PBS classroom to the Quiet Zone area for [the student's] safe place. Staff will need to contact the PBS room or follow [the student] to make sure [the student] goes there.
5. When interviewed the parent alleged that the school was counting the student absent when accommodations were being implemented that resulted in a tardy or absence to class.
6. Per interview with district staff, attendance is taken each hour. Student's hourly attendance can be used in reference with class lists in case of emergency per the Faculty Handbook.

7. Per interview with district staff, when the student is counted absent, the absence does not constitute a penalty when associated with an accommodation. The Attendance Clerk resolves the documentation within 24 hours and marks the absence or tardy as excused.

Analysis and Conclusions

The allegation at issue is that the student's IEP was not implemented as written due to the student being marked tardy when using an accommodation.

The IDEA regulation 34 C.F.R. §300.17(d) requires that special education and related services are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.F.R. §300.320 through §300.324. Further, a child's IEP must be accessible to each regular education teacher, and related services provider, and each teacher and provider must be informed of his or her specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports provided for the child in accordance with the IEP. 34 C.F.R. §300.323(d)(1)-(2)(i) & (ii).

Per the documentation from the district's Attendance Clerk, there is no penalty for the student when the student is absent or tardy due to the use of an accommodation. All records are updated in a timely manner to ensure any recorded absence or tardy resulting from application of an accommodation is corrected. However, it is important to note that each teacher or service provider is required to be informed of his or her specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports provided for the child in accordance with the IEP. In this case, it is clear that staff is informed of the student's accommodations and their responsibilities regarding the IEP. This is shown through staff interviews which revealed that "when the student is counted absent, the absence does not constitute a penalty when associated with an accommodation", and further demonstrated by the classroom teacher properly implementing the IEP (on 4/19/2023) when the student clearly exhibited a behavior that would trigger the BIP. Additionally, the student is permitted to leave each class early, as is outlined in the student's IEP. There is no indication that this is not occurring, or that any teacher/provider is preventing the student from utilizing the student's accommodations. Therefore, the teachers/providers were implementing the IEP regarding the accommodation of extended passing time.

Further, while federal and state law does require that teachers and providers are informed of their specific responsibilities as to a child's IEP, the law does not impose a

specific method on a district as to how to inform a teacher/provider or prevent a district from following district level policy (such as marking a student tardy but then reversing that tardy), as long as the IEP is implemented (and the student is NOT penalized for using the accommodation). While it is essential to implement a student's accommodations, it is also important for teachers to manage the responsibility to supervise the students in attendance. It is the role of the district representative on the IEP team to ensure that the district resources, including policies, procedures and practices employed by the school, adequately support the accommodations required by any student with a disability.

However, for the reasons stated above, this investigator finds that the allegation of a violation of IDEA regulations, specifically the failure to implement the IEP as required by 34 C.F.R. §300.323(d)(1)-(2)(i) & (ii) and §300.17(d) is *not* substantiated.

> Issue 3: The school did not implement the IEP as written, specifically the school failed to appropriately document the Behavior Intervention Plan and accommodations as written in the most recent IEP dated 4/7/2023.

Positions of the Parties

It is the parent's position that the school did not appropriately document the steps of the BIP or accommodations because the form used to document implementation included pre-written response menus that did not allow enough flexibility to accurately describe the actions taken by the school.

It is the position of the district that it did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) and was compliant in that it did implement the IEP by appropriately documenting implementation of the BIP and Accommodations in the most recent IEP dated 4-7-23.

Applicable Statutes and Regulations

The IDEA regulation 34 C.F.R. §300.17(d) requires that special education and related services are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.F.R. §300.320 through §300.324. Also, under the IDEA, a district is responsible for providing "periodic reports on the progress the child is making toward the annual goals (such as through the use of quarterly or other periodic reports…") 34 C.F.R. §300.320(a)(3)(ii).

Investigative Findings

The BIP implementation tracker and the Accommodation tracker were developed by the district and approved by the parent.

The district documentation which is a spreadsheet generated by the tracker form demonstrates implementation of the tracker, as approved, by reflecting the choices of the student as "Accommodation offered", "Accommodation used" or "Accommodation refused". The spreadsheet includes each day the form is used and the accommodations offered/used/refused for each hour.

The parent alleges that the tracking document inclusion of a menu of prewritten responses does not allow the district staff to accurately document implementation of the accommodation.

Analysis and Conclusions

The allegation at issue is that the student's IEP was not implemented as written for using a menu of prewritten responses.

The IDEA regulation 34 C.F.R. §300.17(d) requires that special education and related services are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.F.R. §300.320 through §300.324. Also, under the IDEA, a district is responsible for providing "periodic reports on the progress the child is making toward the annual goals (such as through the use of quarterly or other periodic reports…") 34 C.F.R. §300.320(a)(3)(ii).

The tracking document does have a menu-based section that includes pre-developed responses in association with the target behavior, the steps in the BIP process and the implementation of accommodations. However, each section also includes a section where the teacher can enter expository notes for review, if needed.

Further, the IEP does not stipulate how exact documentation of the BIP or accommodations must occur.

While it is true that a district must provide periodic reports on the progress of a student, the manner in which those reports are provided is up to the discretion of the district. OSEP has provided guidance on the subject, stating that, "the specific manner and format in which a child's progress toward meeting the annual goals is reported is best left to the State and local officials to determine." Fed. Reg. Vol. 71, No. 156, pg. 46664 34 C.F.R. §300.320(a)(3)(ii)). In this case, the district is providing reports, in a manner and

format approved by the district, on a spreadsheet that includes each day the form is used and the accommodations offered/used/refused for each hour.

For the reasons stated above, this investigator finds that the allegation of a violation of IDEA regulations, specifically the failure to implement the IEP as required by 34 C.F.R. §300.320(a)(3)(ii) and §300.17(d) is *not* substantiated.

Conclusion

Regarding the allegations of a violation of federal and/or Kansas special education laws or regulations for:

Issue 1: The school did not implement the IEP as written, specifically the school failed to implement the Behavior Intervention Plan as written in the most recent IEP dated 4/7/2023. This issue is NOT substantiated and there is no corrective action required.

Issue 2: The school did not implement the IEP as written, specifically the school failed to implement the accommodations as written in the most recent IEP dated 4/7/2023 by marking the student tardy when the student would utilize the extra passing minutes permitted within the IEP. This issue is NOT substantiated and there is no corrective action required.

Issue 3: The school did not implement the IEP as written, specifically the school failed to appropriately document the Behavior Intervention Plan and accommodations as written in the most recent IEP dated 4/7/2023. This issue is NOT substantiated and there is no corrective action 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.

Doug Tressler
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 #340
ON APRIL 18, 2023

DATE OF REPORT JUNE 7, 2023

This report is in response to a complaint filed with our office on behalf of the student by his parent, The parent. In the remainder of the report, the student will be referred to as "the student." The student's mother is the parent and in the remainder of this report she will be referred to as "the mother", "the parent", or "the complainant." The student's father is the parent and in the remainder of this report he will be referred to as "the father." Together, Joline and the parent will be referred to as "the parents."

The complaint is against USD #340 Jefferson West Unified School District. It is noted that Keystone Learning Services provides special education services for the USD #340 under an interlocal agreement. In the remainder of the report," the "school," the "district", and the "local education agency (LEA)" shall refer only to USD #340 and is recognized as the 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 28, 2023 and the 30-day timeline ended on May 30, 2023. An extension was granted and the date of the report is June 7, 2023.

Investigation of Complaint

Gwen Beegle, Complaint Investigator, interviewed the parent by telephone on May 1, 2023 to clarify the issues of the complaint and again on June 1, 2023. A follow up phone call was made June 6, 2023. Gwen Beegle interviewed Doug Anderson (Executive Director, Keystone Learning Services) and Belinda O'Dell (Assistant Special Education Director, Keystone Learning Services) on May 15, 2023.

The Complaint Investigator also received emails from the parent and the district between May 1, 2023 and June 6, 2023.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and the district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

Evidence (documents)

- Formal Complaint Response 23FC340-001
- FBA [Student Initials] 3-28-22
- [Student Initials] IEP 5-16-22
- [Student Initials] Staffing notes
- [Student Initials] Attendance Records 8-22-22 to 5-4-23
- [Student Initials] Communication
- [Student Initials] Progress Reports Washburn Tech
- JE Conditional Release 9.26.22
- [Student Initials] Staffing notes 10-16-22
- [Student Initials] Q2 Progress Report
- [Student Initials] Q3 Progress Report
- [Student Initials] parent agreement 3-3-23
- Contact Sheet for SPED Services
- JE Continuance
- [Student Initials] Timeline
- IEP meeting contact record
- [Student Initials] Transcript
- Sample weekly Progress [Student Initials]
- MAP RIT scores for [Student Name]
- NOM [Student Initials] 4-28-23
- [Student Initials] 05-09-23 IEP
- IEP Meeting Contact Record Chart

Evidence: Emails

- Email from Rhonda Frakes (Principal, Jefferson West High School) to the parents dated October 10, 2022 at 5:27 p.m.
- Email from Ms. Frakes to the father and copied to Doug Anderson (Executive Director, Keystone Learning Services) dated December 9, 2022 at 3:03 p.m.
- Email from Ms. Frakes to the parents dated December 12, 2022 at 4:38 p.m.
- Email from parent to Lindsey Scherschligt (School Counselor, Jefferson West High School) dated February 8, 2023 at 6:16 p.m.

- Email from David Smedley (Academic Advisor, Greenbush Virtual Academy) to Ms. Frakes dated May 4, 2023 at 9:23 a.m.
- Email from Ms. Frakes to Dr. Anderson dated May 4, 2023 at 9:26 a.m.
- Email from Dr. Anderson to the parents dated May 10, 2023 at 10:50 a.m.
- Email from Dr. Anderson to the parents and copied to Belinda O'Dell (Assistant Special Education Director, Keystone Learning Services) and the complaint investigator on May 15, 2023 at 2:23 p.m.

Background Information

This investigation involves a 17-year-old student enrolled in the district in the 11th grade. The student began receiving speech/language services in kindergarten to address articulation skills, and was later evaluated and found eligible for services in the category of Learning Disability. The student continued to receive services focused on reading instruction through elementary and middle school years, in both the general education classroom and resource room settings. In the 8th grade, math intervention and self-control goals were added, reading goals continued and speech-language services were discontinued. In the 10th grade, discipline problems precipitated a Manifestation Determination Review, which was followed by an FBA in March, 2022. At an IEP meeting held on May 15, 2022, the student's eligibility category was changed to Emotional Disturbance. In September, 2022, the student was arrested for an out of school assault and spent 10 days in a juvenile facility. The student's release agreement specified house arrest, monitoring, no contact with particular individuals, and not to be within 1000 feet of the district's properties. In December, 2022, the conditional release terms were modified to allow the student to attend school or other events with pre-approval from Youth Services.

> ISSUE ONE: The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide FAPE for the student by not implementing the student's IEP during the 2022-23 school year.

Positions of the Parties

The complainant alleged that the student had not received the services in the student's IEP during the 2022-23 school year, beginning September 16, 2022. The complainant alleged that after the parent agreed to the online program offered to by the district upon their return from the juvenile corrections facility, the school did not provide the

services in the student's IEP. The complainant alleged that the student's IEP specified resource room placement for the student's English course but the student had not received any special education since the student got into trouble.

The district responded that the student's IEP and team meeting notes showed their commitment to adjusting to the needs of the student. A functional behavioral assessment was completed in March 2022 and the new information was included in the IEP meeting in May 2022 in an effort to support the student in the comprehensive high school. The IEP team including the parents considered a more restrictive environment, updated the IEP, and changed the area of exceptionality. The building administrator recommended private counseling services for anger management over the summer, to which the parent agreed. The district reported that the IEP team met again on September 16, 2022 to review the behavior plan and the support being provided. The IEP was amended at that time to change the location of services from the English general education classroom to the resource room, without change to the service minutes.

The district reported that in October the placement changed due to a court order and that evidence of access to the curriculum was shown in communication between the school counselor, the student and the parent. The district reported that the student attended online courses for 3 hours and Washburn Tech for one-half day and that he made acceptable academic progress.

The district responded that the IEP was reasonably calculated to provide benefit and implemented as written and that meetings were scheduled when the student was not responding to the IEP in place. A meeting was scheduled and held on May 9, 2023 in order to write a new annual IEP to address the student's needs.

In an update to its response to the complaint, the district provided a proposed resolution to the parents on May 10, 2023, based on its offer of increased IEP services in the annual IEP dated May 9, 2023. After the annual IEP meeting, the district sent an email that proposes to resolve the complaint going forward. That response stated that the student's academic progress was satisfactory and that the student's accrued credits in the virtual model put the student on pace to graduate with one additional English credit and Washburn Tech classes. The student's plan of study was written into the new annual IEP dated May 9, 2023. The district states: "To Resolve: We agree to provide 120 minutes/week of academic support for [the student's] English class, with the daily time and days/week of delivery of those services negotiable once the level of support needed in the new virtual program is determined. In addition, 15-minutes of social work services

will be provided per week to assess [the student's] capacity to deal with the frustration of non-preferred tasks (English class) and to coach [the student] on perseverance to complete any assignments or negotiate personal interactions that [the student] finds frustrating."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in the district.

The district and the parent agreed that an FBA dated March 28, 2022 was conducted for the student.

The district and the parent agreed that the student's IEP dated May 15, 2022 was reasonably calculated to provide benefit to the student.

The student's IEP dated May 15, 2022 showed goals in: (a) stress reduction and conflict resolution skills, (b) interpersonal communication to avoid conflict and (c) organization of school work. The IEP showed the following services: (a) social work for 15 minutes two days every week; (b) general education inclusion special education support in core classes for 270 minutes two days every week and 135 minutes one day every week; (c) special education resource pull out for 90 minutes two days every week and 45 minutes one day every week. Five accommodations were included: a quiet separate setting, assignments read aloud, hot pass to leave a room when needed, repeated directions, and remaining in the special education resource room instead of attending a class with a substitute.

The district and the parent agreed that the student attended private counseling over the summer of 2022 at the parent's expense and at the recommendation of district staff.

The district reported and staffing meeting notes showed that the IEP team met on September 15, 2022 to address the student's discipline referrals, review the IEP placement and supports, and to support teachers with behavior support strategies.

The district reported that the student's placement was changed from general education inclusion support for the student's English class to special education pull out support with the same number of minutes of service. The district reported and documents showed that it provided prior written notice of this change, with consent signed by the parents on September 16, 2022.

The parent reported and documents showed that the student was released from a juvenile facility to home arrest with the condition of not being within 1000 feet of the school on September 26, 2022.

The district reported and documentation showed that in an email dated October 10, 2022 at 5:27 p.m., the principal communicated to the parent that the student would attend half day at Washburn Tech and 3 hours of online classes through Greenbush Virtual Academy (GVA). The email further stated that online tutoring would be available through GVA and "As per [the student's] IEP [the school social worker] will arrange times to visit with [the student] via a phone call or a zoom meeting. One of the special education teachers will do a weekly check-in with [the student]. This teacher will reach out and set up a regular time for them to visit by phone or zoom meeting." The district confirmed that this was an accurate understanding of the plan for the student, due to the September 26, 2022 conditions of the student's home arrest.

The parent reported and documents showed that the student's online instruction with GVA began on October 12, 2022.

The district reported and provided unsigned staffing notes of a meeting to amend the IEP held on October 16, 2022, which showed the IEP services were changed to 10 minutes Social Work Services one time every week and 20 minutes Special Education Services every week.

The parent reported that she was not notified of this meeting. The district did not provide a PWN for the change of services to online and homebound services concurrent with the IEP amendment. No IEP amendment form was provided to the investigation, nor did the district provide documentation of the phone call in which the parent agreed to the October 17, 2022 IEP amendment without a meeting or the IEP changes made by the district at that time.

The district reported and communication logs with multiple entries dated from October 7, 2022 to May 3, 2023 showed that the school counselor communicated with the student and at times the parent about the student's course of study, including the student's Washburn Tech courses, access to online courses, online course choices, enrollment, and some course grades and assignments.

The district and parent agreed that until December 7, 2022, the student's court conditions made them unavailable for in person attendance at school, and that the student attended online school rather than attending high school classes.

The parent reported and the district acknowledged that the parent communicated to the district that the parent was providing extensive academic support ("acting as [the student's] para") to the student for the student's online courses in an email to the school counselor dated February 8, 2023 at 6:16 p.m. The district reported that the parent requested that the student be enrolled in a different online course rather than English, and the district complied.

The Contact Sheet for SPED Services showed that two voicemail messages were left by the school social worker to set up services on October 16, 2022 and November 1, 2022 but it does not show social work services were provided. The Contact Sheet for SPED Services showed that academic check-ins were completed with the student on December 12, 2022, December 19, 2022, and January 18, 2023. The district reported that the employee assigned to do the academic check-ins left the district as of February 28, 2023 and reported that the employee "called most weeks after the 1/18/23 phone call and was able to make contact with [the student] the majority of the time." Four more phone calls were made to do academic check-ins on March 30, 2023; April 4 ,2023; April 11, 2023; and April 27, 2023, without contact with the student.

Applicable Regulations and Conclusions

In Kansas, a free appropriate public education (FAPE) is provided for children with disabilities and defined as special education and related service, provided at the public expense and under public supervision that meet the standards of the state board, include appropriate preschool, elementary or secondary school education and provided in conformity with an individualized education program (KAR 91-40-1). According to 34 C.F.R. 300.101, FAPE must be available to all children between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school as provided for in 300.530(d). However, a district is not required to provide FAPE to any student who graduates with a regular high school diploma (K.A.R. 91-40- 2(g) (1)).

The vehicle for providing Free Appropriate Public Education (FAPE) is the Individualized Education Plan developed for each eligible child with a disability. The IEP is "a written statement for each student with an exceptionality, which describes that child's educational program and is developed, reviewed, and revised in accordance with special education laws and regulations" (Kansas Special Education Process Handbook p. 8). Each State must ensure that an IEP meets the requirements of the IDEA and "is developed, reviewed, and revised for each child with a disability in accordance with §§300.320 through 300.324, except as provided in §300.300 (b)(3)(i)." The student's IEP must include, inter alia, a child's measurable goals, a statement of special education and

related services, and a statement of any individually appropriate accommodations for each child on an individual basis (34 C.F.R. §300.320(a)(2)-(6)). According to 34 C.F.R. §300.323(a) and K.S.A. 72-3429 (a)(2), an IEP must be in effect at the beginning of each school year for each eligible student.

In this case, it is found that the student's IEP, which was in place at the beginning of the year and amended at an IEP meeting on September 15, 2022, required the student to have (a) social work for 15 minutes two days every week; (b) general education inclusion special education support in core classes (excluding English) for 185 minutes two days every week and 90 minutes one day every week; (c) special education resource pull out English for 85 minutes 2 times each week and one time for 45 minutes each week, and (d) special education resource room pull out for 90 minutes two days every week and 45 minutes one day every week.

It is found that these services were not provided after September 16, 2022. It is found that the student was not available for education services from September 18, 2022 through September 26, 2022 at the time of their release to home arrest. Further, it is found that the student was not available due to court ordered conditions to attend high school classes on school grounds until after December 7, 2022.

After the district met to amend the IEP on October 16, 2022, the student's IEP according to staffing notes specified only two services, social work (10 minutes one time each week) and special education (20 minutes one time each week). Furthermore, the district's contact logs failed to show that the social work services were provided at any time after the October amendment. Contact logs showed that special education check ins occurred one time weekly for 3 weeks of the 22 weeks of school from October 16, 2022 to April 28, 2023.

Although the district amended the IEP documented in the October 16, 2022 meeting (staffing notes dated October 27, 2022), the district did not provide Prior Written Notice or request consent as will be described in Issue 2. No interview or records provided indicated that the district provided Prior Written Notice or request consent for the parent to make these amendments. The district, when asked, could not provide evidence that the parent gave consent to an IEP amendment without a meeting in October, and the parent denied any knowledge of the meeting.

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district failed to provide FAPE for the student by not implementing the student's IEP during the 2022-23 school year.

ISSUE TWO: The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), changed the IEP through administrative directive without notice of a meeting, an IEP meeting, and without prior written notice of the changes.

Positions of the Parties

The complainant alleged that the principal of the school changed the IEP by requiring the student to continue on home based and online school past the time when the student was allowed by the student's court agreement to return to school property on December 7, 2022. The complainant alleged that there was no special education team meeting or prior written notice of changes to the student's program. The complainant alleged that the principal notified them on or before December 12, 2022 that the student would not be allowed to attend school or school events due to a code of conduct violation.

The district responded that the original change in location of service was based on a court order for a house arrest and the student was not permitted to be within 1000 ft of a Jeff West property and other students who attend Jeff West High School. On October 17, 2022 the team met to amend the IEP to accommodate the student who was restricted to home-based services due to court ordered house arrest with pending federal charges. Based on the needs specified in the student's IEP and provided in the school setting, the change of location resulted in a temporary change in service delivery.

The district responded that when the requirement to maintain a 1000-foot distance from a district property was lifted, the building administrator met with the parents to discuss remaining in the virtual courses to ensure full credit for the work already done. Then, in March the building administrator offered a formal service delivery option in lieu of a long-term suspension or expulsion hearing based on the pending federal charges that were of a violent nature.

The district acknowledged that the Prior Written Notice for the IEP changes associated with the October 16, 2022 staffing are missing "due to technical error with the new IEP system, or staff oversight." The district proposed to reconvene the IEP team at the time of the annual IEP to discuss strategies for providing "more reliable, consistent access" to services, to review the prior errors and determine if special education support was needed based on performance data, and provide prior written notice following the IEP meeting.

Following the May 9, 2022 annual IEP meeting for the student, the district reported that the new IEP, additional in-person services, and Prior Written Notice following the IEP meeting "will eliminate any ambiguity regarding the services to be provided." Further, the district offered that it "added an IEP reader in January 2023 to provide another checkpoint for missing paperwork. Paperwork requirements will be reviewed with new staff and veteran teachers at the in-service in August 2023 before school starts to ensure that staff understand that prior written notices must be sent upon completion of an IEP or an IEP amendment, regardless of the circumstances of that meeting."

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in the district.

The findings of Issue One are incorporated herein by reference.

The district reported that no Prior Written Notice can be provided to the investigator that would show the October 16, 2022 change in IEP services required by the student's court ordered house arrest from attendance in person at the high school to online classes that occurred due to the student's detention in a juvenile facility and subsequent court ordered conditions.

The district reported that the parent agreed to an IEP amendment without a meeting dated October 16, 2022 that changed the IEP services due to the change of schooling to an online format in response to the court ordered restrictions. Although the district provided unsigned staffing notes of the IEP amendment discussion which are dated October 27, 2022, the district cannot provide any documentation that the parent agreed to amend the student's IEP without a meeting. The parent reported that they did not know about this meeting nor the changes to the IEP enacted by the district at that time.

The district and the parent agreed, and documents showed, that the student's court conditions permitted him to attend school after December 7, 2022. The district and the parent agreed and documents showed that on or before December 12, 2022, the principal notified the parents that the student was "not in good standing" and would not be permitted to attend school events due to pending charges. The district and the parent agreed that there was no IEP meeting at this time.

The district reported that the principal proposed an alternative graduation plan for the student to the parent on March 3, 2023 as an alternative to proceeding with an

expulsion or suspension hearing. The principal's notes stated: "It was explained to the [parents] that the school is looking to move toward a hearing to ask for suspension or expulsion based on 72-8901 item (d) conduct which, if the pupil is an adult, constitutes the commission of a felony, or if the pupil is a juvenile, would constitute the commission of a felony if committed by an adult. It was shared that while this is an option we would like to propose a compromise instead of moving to a hearing."

The complainant alleged that they were told that an expulsion hearing would go forward the following week, by March 10, 2023 unless they signed the agreement. The parents and the student signed the agreement on March 6, 2023.

The district reported that the March 3, 2023, alternative to expulsion graduation plan was not an IEP team decision and the special education team did not meet at that time. The parents agreed that there was no special education team meeting on March 3, 2023. The district reported that the terms of this agreement did not change the students' course of study nor the location of Washburn Tech in person courses or online course enrollment.

The district reported that since home based services began in October, 2022, the student has made acceptable academic progress by passing the student's courses. Quarterly progress monitoring on two goals related to self-control showed 0% proficiency.

Applicable Regulations and Conclusions

According to the prior written notice requirements in 34 C.F.R. § 300.503, K.S.A. 72-3432 and K.A.R 91-40-26, Prior Written Notice must be provided when any action is proposed or refused by an agency and it must include a description of other options considered, reasons why other options were rejected, and the factors relevant to the district's decision.

According to 34 C.F.R. § 300.116 (a)(1) placements are made by the IEP team, including parents and other persons knowledgeable about the child. Also, each agency must ensure that placement is based on the child's IEP ((34 C.F.R. §300.116(b)(2)). Further, KAR 91-40-27 requires parental consent for making a "material change in services to, or a substantial change in the placement of an exceptional child unless the change is made under the provisions of KAR 91-40-33 through 91-40-38 or is based on the child's graduation from high school. . ." However, informed parental consent is not required to make a substantial change in placement if the school can document that: (a) it made

reasonable efforts to obtain such consent as described in K.A.R. 91-40-17(e)(2); and (b) the child's parent has failed to respond (K.A.R. 91-40-27(g). A "substantial change in placement" means the movement of an exceptional child for more than 25% of the child's school day, either from a more restrictive to less restrictive environment or less restrictive to more restrictive environment (K.A.R. 91-40-1(sss)). A "material change in service" means an increase or decrease of 25% or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child"(K.A.R. 91-40-1(mm)). Further, parental consent is not required or (c) if the change is made under the discipline provisions in K.A.R. 91-40-33 to -38 (K.A.R. 91-40-27(a)(3); K.A.R 91-40-27(g)).

In this case, the district asserts that the homebound services began at the October 16, 2022 staffing when the IEP services were changed and that these changes were not being made under the discipline provisions of IDEA but were made to accommodate the student's circumstances. However, the parent claimed that they did not consent to the changes made during an IEP amendment without a meeting held by the district on October 16, 2022 and the district cannot provide evidence that the parent's agreed to amend the IEP at that time.

It is found that both a material change of services (more than 25%) and a substantial change in placement (more than 25%) occurred at the time the student enrolled in online school (October 12, 2022), and that the district was required to provide prior written notice and to obtain parental consent for the changes. Therefore, it is found that the district failed to hold a meeting, gain parental consent to make an IEP amendment without a meeting, provide Prior Written Notice, or request parental consent for the changes in placement and IEP services.

Further, the district did not permit the student to return to school in December after the student's court conditions permitted him to do so, instead requiring him to continue to attend online classes through the remainder of the school year. The district did not hold an IEP meeting at this time to change the student's IEP to reflect these changes.

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district changed the IEP through administrative directive without notice of a meeting, an IEP meeting, or without prior written notice of the changes.

ISSUE THREE: The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to provide an appropriate IEP for the upcoming school year through the student's graduation in May of 2024.

Positions of the Parties

The complainant alleged that the alternative graduation plan provided by the principal operated outside the special education process and failed to provide an appropriate IEP for the remainder of the student's school tenure. The parent claimed that the alternative graduation plan they were required to sign to avoid expulsion did not address the student's special education program.

The district replied that this point is moot, because the last agreed-upon IEP remained in effect until May 15, 2023 and the IEP amendment documents and related email communication clearly outlined the requirements and timeline to finish and graduate. The district responded they have scheduled an annual IEP meeting and sent a Notice of Meeting dated April 28, 2023 to the parents. The meeting was scheduled to be completed prior to the expiration of the current IEP and "will consider all requests by the parents to provide support and deliver content in a manner that improves the student's performance." The district also responded that student performance data reflects that the current delivery model has been effective.

Following the annual IEP meeting on May 9, 2023, the district updated its response, saying that meeting "acts to resolve any inappropriate component of previous agreements in that the updated IEP again specified the class schedule to achieve graduation. It also amended services to increase the likelihood that [the student] will have access to special education support, in-person, for [the student's] final English class." The district stated that whether the student could participate in a graduation ceremony "was not subject to the IEP team review" and that this was discussed with the parents.

Findings of the Investigation

The findings of Issue One and Issue Two are incorporated herein by reference.

The district provided a Notice of Meeting dated April 28, 2023 for an IEP meeting on May 9, 2023 to discuss changes and develop an annual IEP that would include transition

planning. The district reported that the meeting was attended by the parents and a new IEP was proposed at that time.

The district reported and documents showed that two IEPs for the student were in place during the 2022-23 school year: the IEP dated May 15, 2022 which was amended with a meeting on September 16, 2022 and amended by the district (as found in Issue One) on October 16, 2022 and the proposed IEP dated May 9, 2023.

At the point of the report, the parent reported that they have not signed the May 9, 2023 IEP or any prior written notice associated with it.

The district reported that the student has made satisfactory progress during the past year in the student's Washburn Tech classes and the student's online high school classes.

Applicable Regulations and Conclusions

According to 34 C.F.R. 300.323 (a) and K.S.A. 72-3429(a)(2), an IEP must be in effect at the beginning of each school year for eligible students.

It is found that the district did have an IEP of record for the student during the 2022-23 school year and that the IEP proposed on May 9, 2023 provides services through May 8, 2024. It is noted that the district has met with the IEP team and provided a new IEP that specifies the special education services in place for the upcoming year to address the parent's concerns about adequate in-person support for the student's senior English class. However, at the time of the report, the May 9, 2023 IEP remains unsigned by the parents and the May 15, 2022 IEP has elapsed.

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district failed to provide an appropriate IEP for the upcoming school year through the student's graduation in May, 2024.

ISSUE FOUR: The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to follow the discipline procedures as outlined in IDEA when removing the student from school.

Positions of the Parties

The complainant alleged that the principal did not discuss IDEA's discipline procedures nor offer them any alternative to the "alternative to expulsion" plan dated March 3, 2023. The parent alleged that the principal required them to agree within 3 days of the meeting in order to avoid the student's expulsion. The complainant alleged that the principal used the student's legal status as a violation of the code of conduct to specify that the student was not in good standing and therefore could not attend school or school events, including graduation. The complainant alleged that the district informed them in December, 2022 that the student was a student not in good standing and required to continue in online classes.

The district responded that the parent's agreed to the alternative placement in lieu of a disciplinary removal based on pending federal charges. The district acknowledged that the IEP team should have reconvened to evaluate progress and amend the IEP after the parent's agreement to the terms of the agreement, given that the October amendment was made to accommodate the student's house arrest. The district responded that the disciplinary diversion agreement was done outside of an IEP Meeting and constituted a unilateral decision made by the parents, without the IEP team's involvement. The district stated that if the parent's revoked their agreement to the alternative to expulsion agreement, then the IDEA discipline procedures would be enacted when the district initiated a long-term suspension hearing. The district also responded that the district would answer parent questions and address parent concerns about graduation and student performance at the student's annual IEP meeting on May 9, 2023.

In an update to its response to the complaint, the district provided a proposed resolution to the parents in an email dated May 10, 2023 following a May 9, 2023 IEP meeting. That response stated: "Parents were informed that disciplinary procedures would be activated if they withdrew the parent agreement entered into on March 6, 2023; that was, to receive services in an alternate location in lieu of a disciplinary hearing. Under the new IEP [the student] will continue to participate in-person at Washburn Tech but now for a full day rather than 1/2 day of classes. [The student] will also receive in-person tutoring for [the student's] English class as indicated in the IEP

dated May 9, 2023. To Resolve: Parents were provided parent's rights and assured that [the student] would be eligible for services, although in an alternative setting, if they decided to withdraw the parent agreement to activate the disciplinary procedures, regardless of the outcome of a subsequent hearing."

Findings

The findings of Issue One, Issue Two and Issue Three are incorporated herein by reference.

The parents and the district agree that the last IEP meeting for the student was held on September 15, 2022 and the parents signed a prior written notice giving their consent on September 16, 2022. The parents and the district agree that the student began online school on October 12, 2022.

The parents and district agree and documents show that the student was permitted by the court to attend school and school related events with approval from Youth Services after December 7, 2022. The parties agree that the restriction from being present on school property was removed by the court. The parent and the district agree that the district notified the parents in writing that the student was "not in good standing" on December 12, 2022.

The parent and district agreed that a meeting between the parents and school principal occurred on March 3, 2023 during which the alternative proposal to expulsion was provided to the parents. The parent and district agreed that the principal created the proposal and the parents were permitted to offer two amendments to it. The parents reported and the district's documentation affirmed that the parents were informed that the district had decided to move toward a hearing to suspend or expel the student unless they did not sign the alternative proposal to expulsion by the following school day. The parents claimed that they were informed that a hearing was to be held on or by March 10, 2023 for the student's expulsion. The parents and the student signed the proposal on March 6, 2023.

The parent and district agreed, and the document showed, that the alternative to expulsion proposal lists the following conditions: (1) the student continues to receive the student's education through Washburn Tech and the online courses offered by the district; (2) the student remains "not in good standing" and remains off campus for the remainder of the student's school career; (3) the student will be allowed to graduate by meeting the required state of Kansas requirements or a reduced number of credits; (4)

the district would allow the student to acquire the student's credits early and finish the student's senior year at a skills program at Washburn Tech; (5) if permitted by conditions set by the court, the student could drive to the program (added by parents); (6) a small private graduation ceremony could be provided by the district; and (7) the issue of graduation ceremony participation can be revisited at a later time (added by parents).

The parents reported that no discussion of IDEA discipline provisions was provided to them at the March 3, 2023 meeting. The principal's notes of the March 3, 2023 meeting provided no documentation that the IDEA discipline provisions were discussed.

The parent and district agreed that no special education staff were present at the March 3, 2023 meeting, nor was there an IEP meeting held at that time.

Applicable Regulations and Conclusions

According to K.S.A. 72-3433(a)(3), school personnel may order a change of placement to an appropriate interim alternative educational placement for not more than 186 school days if it is determined that the student's violation of the code of conduct was not a manifestation of their disability, if the disciplinary procedures are applied in the same manner as would be applied to children without disabilities, except that services must be provided.

When considering a long term removal, as would be the case if the district proceeded to a hearing under K.S.A. 72-8901(d) (the statute mentioned by principal) and the student was expelled or suspended long term, the district must: (1) notify the parents and provide them with a copy of the Parent's Rights notice no later than on the day the decision is made to make a removal that constitutes a change of placement (K.S.A. 72-3433(d)(1)); (2) on the 11th day of removal, the school must begin providing services, and the IEP team rather than school officials decides on the service and their provision; (3) the school, parent and IEP team members determine if the student's violation of the school's code of conduct was a manifestation of their disability; (4) provide the parent with prior written notice of the meeting and the services to be provided during a disciplinary removal (K.A.R. 91-40-25); and (5) the IEP team, including the parent, determines the special education and related services to be provided during the removal, although parental consent for the disciplinary change in placement is not required. (K.A.R. 91-40-27(a)(3)).

The Office of Special Education Programs states, in Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (July 19, 2022),

that when a parent of a child with a disability agree with school personnel about a change of placement after a code of conduct violation has occurred, the change of placement is not considered a removal under the discipline provisions. So, when school personnel and parents agree that a different educational placement better allows the IEP to be implemented and FAPE provided, a new placement would not be considered a change of placement in the context of the discipline provisions. OSEP continues: "Such changes in placement remain subject to the placement requirements in 34 C.F.R. § 300.116 and the prior written notice requirements in 34 C.F.R. § 300.503" (p. 14).

In this case, although the district met to alter the student's IEP in October 2022 to accommodate the conditions required by the student's court conditions, the district failed to change the student's placement by holding an IEP team meeting including the parents, providing prior written notice of changes in the IEP, and gaining parental consent for material changes in services. Therefore, it is found that the parents and school did not agree that a different educational placement would better allow the IEP to be implemented and FAPE to be provided.

Subsequently, when the student's court ordered conditions were changed in December, 2022 to allow the student to return to school property, the district determined that the student was "not in good standing" and it did not permit the student to return to the school. At this point, the student was available to return to school property and to the placement determined by the September 15, 2022 IEP meeting if the school had permitted them to do so. Again, the district failed to hold an IEP meeting to change the student's placement, instead requiring the student to continue in online classes with little to no services being provided by the school.

Furthermore, the district chose not to apply IDEA's discipline provisions when offering the alternative to expulsion plan for the student's school completion. Instead, they offered the parents and the student a plan that continued the student's current plan of study (online courses and Washburn Tech enrollment), continued the student's "not in good standing" according to the code of conduct, and set out the conditions for the student's school completion mainly focused on restricting presence on school grounds, along with extracurricular and graduation ceremony participation. Although the parents were permitted to make small alterations in the plan authored by the principal, they reported that they were informed that failure to sign ensured that the district would move toward a hearing to expel the student during the following week.

However, IDEA's discipline provisions apply to students with disabilities who have code of conduct violations that warrant the consideration of long-term suspension or

expulsion at the point the district determines they will hold a hearing. At the time of the decision to move to a hearing, the district is required to enact the discipline provisions of IDEA: to notify the parents of their rights, to ensure that the student's services are in place after the 11th day as determined by the IEP team, and to meet with the IEP team to fulfill the duties noted above. In this case, although the principal's notes used suggestive language ("looking to move toward a hearing"), the parents reported a clear impression that the hearing on the student's expulsion would be held within the next week of school, noting specific dates. School officials are well aware of their responsibilities to both balance the need to ensure school safety and protect against violating the protections of IDEA for students with disabilities. School officials must provide full information on the IDEA discipline provisions when offering an alternative to expulsion plan. If they do not, parents cannot give informed consent based on full knowledge of the situation and potential courses of action.

Based on the foregoing, according to IDEA and Kansas special education regulations it *is* substantiated that the district failed to follow the discipline procedures as outlined in IDEA when removing the student from school.

Corrective Actions

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. A violation occurred in the following areas:

(A) Federal law at 34 C.F.R. 300.101 requires that FAPE must be available to all children between the ages of 3 and 21, including children who have been suspended or expelled from school as provided for in 300.530(d).

In this case, evidence supports the finding that the district did not provide the services specified in the student's IEP dated May 15, 2022 and amended in a meeting and with Prior Written Consent on September 16, 2022.

(B) Federal law at 34 C.F.R. 300.503, K.S.A 72-3421 and K.A.R. 91-40-26 require that Prior Written Notice must be provided when any action is proposed or refused by an agency. Federal law at 34 C.F.R. § 300.116(a)(1) requires an IEP team to make placement decisions based on the IEP, and KAR 91-40-27(g) requires parental consent for making a material change in services to, or a substantial change in the placement of an exceptional child.

In this case, evidence supports that, at the time of the October 16, 2023 amendment

without a meeting to change the IEP, a substantial change of placement and material change of services occurred. At that point, the district was required to provide Prior Written Notice and request parental consent for the material change in services and substantial change in placement. No evidence suggests that Prior Written Notice or an IEP amendment was offered to the parents for their consent to these changes.

(C) Federal law at 34 C.F.R. 300.323 (a) and K.S.A. 72-3429(a)(2) require an IEP must be in effect at the beginning of each school year for eligible students.

In this case, evidence substantiates that a gap in the student's IEP occurred when the district and parent failed to agree and to put into place the student's IEP dated May 9, 2023.

(D) Federal law at 34 C.F.R. 300.530 and 34 C.F.R. 300.536 set out the discipline provisions of IDEA, including change of placement for disciplinary reasons.

In this case, evidence supports that the district failed to follow IDEA provisions to change the student's placement when it determined that a hearing to expel the student was going to be held and required the parents to sign an alternative to expulsion agreement in order to prevent the hearing and threatened expulsion.

Based on the foregoing, the district is directed to take the following actions:

1. Within 15 calendar days of the date of this report, the district 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. 300.101requires that FAPE must be available to all children between the ages of 3 and 21, including children who have been suspended or expelled from school as provided for in 300.530(d).
    b. Comply with federal regulations at 34 C.F.R. 300.503 that require prior written notice for special education actions.
    c. Comply with federal regulations at 34 C.F.R. 300.323 (a) that require IEPs to be in effect for all eligible students at the beginning of the year.
    d. Comply with federal regulations at 34 C.F.R. 300.530 and 300.536 that require procedures for change of placement for disciplinary reasons.
2. By June 30, 2023, the district will submit an assurance that they will offer to the parent the following services during the 2023-24 school year: (a) 130 minutes each week of direct academic support for the student's upcoming English class; (b) 15 minutes of social work services each week to coach the student on perseverance to complete any assignments and negotiate personal interactions that he finds frustrating and (c) 4,536 minutes of compensatory education and related services (16.8 weeks from December

12, 2022 to May 9, 2023 at 270 resource room minutes) till the time of the student's May, 2024 graduation as described below.

   a. The parent can refuse some, none, or all of the compensatory education offered by the district.
   b. The content of the compensatory education and related services shall be to be determined by the parent and the student, directed toward the student's 2022-23 IEP goals of (a) stress reduction and conflict resolution skills, (b) interpersonal communication to avoid conflict and (c) organization of school work; or toward the student's success in academic courses, technical courses or transition activities.
   c. Compensatory education may be completed during the 2023 summer and 2023-24 school year if the parent agrees.

3. By June 30, 2023, the district will submit (a) an assurance that the parents have accepted (or rejected) the services in the proposed IEP dated May 9, 2023, (b) the prior written notice for the IEP and the number of the 4,482 minutes compensatory education accepted by the parent, and (c) a plan to have bi-weekly supervisory monitoring that the direct services in the IEP and the agreed upon compensatory education are being implemented during the 2023-24 school year.
4. By October 15, 2023; December 15, 2023; and March 15, 2023, the district will submit updates on the student's educational services being provided, as shown in the supervisory plan.
5. By July 15, 2023, the district will submit a plan to review prior written notice, placement requirements and the requirement that IEPs be continually in place through the school year with new and veteran staff including the staff at the student's school at the August, 2023 professional development to ensure that staff understand that prior written notices must be sent upon completion of an IEP or an IEP amendment, regardless of the circumstances of that meeting, and that services must be continually in place for eligible students. Professional development material, agendas, and attendance will be submitted to SETS within 30 days of the completion of the training.
6. By July 15, 2023, the district will submit a plan to review IDEA discipline provisions with building administrators and other relevant administrative personnel, including those at the high school. Professional development material, agendas, and attendance will be submitted to SETS within 30 days of the completion of the training.

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.

Gwen P. Beegle, Ph.D.
Gwen P. Beegle, 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)

23FC47 Appeal Review

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No.340
Jefferson West: 23FC340-001

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on April 28, 2023, by ---------- on behalf of her child, ----------, against USD # 340. In the remainder of this decision, ---------- will be referred to as "the parent," and ---------- will be referred to as "the student." USD #340 will be referred to as “the district”. An investigation of the complaint was undertaken by the 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 allegations, was issued on June 7, 2023. That Complaint Report concluded that there were violations of special education statutes and regulations.

Thereafter, the 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 parent, the complaint report, the district’s appeal and supporting documents, and the parent’s response to the 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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The Appeal Committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

The district appeals the Investigators findings on issues one through four of the Complaint Report as follows:

1. Issue One: The district disagrees with the Investigator's finding of a violation of FAPE due to a failure to implement the September 16, 2022, IEP.
2. Issue Two: The district disagrees with the Investigator's finding that the student's September 16, 2022, IEP was changed "through administrative directive without notice of a meeting, an IEP meeting, and without prior written notice of the changes."
3. Issue Three: The district disagrees with the Investigator's finding that "the district failed to provide an appropriate IEP for the upcoming school year thorough the student's graduation in May 2024."
4. Issue Four: The district disagrees with the Investigator's finding that "the district failed to follow the discipline procedures as outlined in IDEA when removing the student from school."

DISCUSSION OF ISSUES ON APPEAL

Issue One: The district disagrees with the Investigator's finding of a violation of FAPE due to a failure to implement the September 16, 2022, IEP for the following reasons:

1. The district argues that its failure to obtain written consent through a PWN, for changes to the student's September 16, 2022, IEP, initiated after an October 16th phone IEP meeting, is "at most" a "technical violation for failure to issue a PWN and not a denial of FAPE."
2. The district argues that since it was "not clear that the student was able to return" to school after "the court's restrictions changed in the Continuance Order, dated December 7, 2022", that the district simply "continued the placement that was agreed upon in the October 10, 2022 Zoom meeting and the October 16, 2022 phone IEP meeting", and that the "only special education minutes that were not provided were the social work minutes after the week of 11/1/22 through the end of the 2022-2023 school year."
3. The district argues that, although the district social worker, employed during the 2022-2023 school year, did fail to provide social work special education minutes beginning after the week of 11/1/23 until the end of the school year, that that employee has since retired, and therefore, "it is unfair to the social worker taking

over the case load to assume s/he will not provide services as required" and should not be subject to the bi-weekly supervisory monitoring required in the corrective action.

First, in the appeal, the district argues that its failure to obtain written consent through a PWN, for changes to the student's September 16, 2022, IEP, purportedly initiated after an October 16th phone IEP meeting, is "at most" a "technical violation for failure to issue a PWN and not a denial of FAPE."

The district offers documents, including a recording of a meeting between the principal, the parent(s), and the student which occurred on October 10, 2022, in which the district and the parent(s) verbally discussed and agreed to have the student attend classes through Greenbush Virtual Academy (GVA). In her report, the investigator notes that "the parent reported, and documents showed that the student's online instruction with GVA began on October 12, 2022." The district notes that this change in placement was due to the student being under a court order to attend school at home until December 7, 2022.

The district also provides text messages, exchanged between the district and the parent, regarding an IEP meeting that was to be set up on October 18, 2022.

Additionally, the district provides unsigned "staffing notes", dated October 27, 2022, which indicate that the purpose of the IEP meeting, (discussed in the text messages, and the district reports was held October 16, 2022), is an "IEP Amendment Discussion". Topics discussed include the student's continued participation in an online curriculum due to the student's court order to attend school from home and changes in services offered to the student. The district notes that this IEP Amendment meeting was based on the October 10, 2022, Zoom conversation involving the parent. The staff notes also indicate that the IEP team agreed to a change in services.

However, the notes are unsigned by either the parent or any other member of the IEP team. Additionally, the district reports that the IEP team meeting occurred on October 16, 2022, but the "staff notes" are dated October 27, 2022, and text messages presented by the district indicate that the phone IEP meeting was to occur on October 18, 2022, not October 16, 2022. Finally, the district concedes, and the investigator found, that "the district did not provide a PWN for the change of services to online and homebound services concurrent with the IEP amendment" as was discussed in a Zoom call between parent(s) and the principal on October 10, 2022.

Under 34 C.F.R. 300.324(a)(4), a parent of a child with a disability may agree not to convene an IEP Team meeting for the purposes of making changes to a child's IEP, however, even if that is the case, the changes must be developed in a written document to amend or modify the current IEP. Further, consent for any change in placement must be obtained before the change in placement can occur. IDEA defines consent as the parents understanding and agreeing in writing to the carrying out of the activity for which his or her consent is sought. 34 C.F.R. 300.9(b); K.A.R. 91-40-1(l)(2).

Given the conflicting reports, dates, and documents, and the fact that the staff notes labeled "IEP Amendment Discussion" are unsigned, and that both parties and the investigator agree that there was not a PWN with written consent for the changes in placement following any meeting in October 2022, the Committee finds that the October 16, 2022 IEP meeting does not constitute a valid change in placement, and therefore, the September 16, 2022, IEP is the most current, valid IEP.

Further, the Committee notes that the failure to obtain written consent through a PWN is not a "technical error". Under IDEA there is no such thing as a "technical error", and failure to provide a PWN and get written consent is a substantive violation. Obtaining written consent from a parent for a material change in services or a substantial change in placement, pursuant to K.S.A. 72-3430(b)(6) is one of the most basic rights for parents under the Kansas Special Education for Exceptional Children Act.

In this case, the investigator found, and the Committee agrees, that the district failed to implement the students IEP as written, resulting in a failure to provide FAPE due to a failure to implement the IEP (the September 16, 2022, IEP). Therefore, the Committee sustains the investigators finding that the district failed to provide FAPE for the student by not implementing the student's IEP during the 2022-23 school year.

Second, the district argues that since it was "not clear that the student was able to return" to school after "the court's restrictions changed in the Continuance Order, dated December 7, 2022", that the district simply "continued the placement that was agreed upon in the October 10, 2022, Zoom meeting and the October 16, 2022, phone IEP meeting". However, as stated above, the October change in placement was not valid due to the lack of written consent. Therefore, the district was obligated to provide services to the student as was required in the September 16, 2022, IEP. By the districts own admission this did not occur since the district was following the invalid changes instituted through an administrative change to the IEP in October. As a result, the Committee finds that the social work minutes required under the IEP, as noted by the investigator, do in fact begin from the September 16, 2022, IEP. Therefore, the

Committee sustains the investigators finding of required compensatory Special Education minutes.

Third, the district argues that "it is unfair to the social worker taking over the case load to assume s/he will not provide services as required" and should not be subject to the bi-weekly supervisory monitoring required in the corrective action. While the Committee understands that the social worker who was working with this student is now retired, that fact does not negate the district's responsibility regarding corrective action. Any corrective action, determined to be necessary by an investigator, is attached to, and remains with, the district, *not* the individual district employee.

Therefore, the Committee sustains the corrective action requiring the district to conduct bi-weekly supervisory monitoring of the social worker.

Issue Two: The district disagrees with the Investigator's finding that the student's September 16, 2022, IEP was changed "through administrative directive without notice of a meeting, an IEP meeting, and without prior written notice of the changes" for the following reasons:

1. The district argues that the October 16, 2022, phone IEP meeting "served to verify the services that had been discussed on October 10, 2022, as the special education staff had not been present for that discussion" and that the failure of the district to generate a PWN for the changes are "at most, a technical violation."
2. The district argues that the principal "believed that the student was still subject to the prohibition of being within 1000 feet of District property as of December 9, 2022" and was therefore just "continuing [the student] in [the student's] placement as agreed in the October 10th and October 16th meetings."

First, the district argues that its failure to generate a PWN for the changes made to the student's September IEP are "at most, a technical violation." The district notes that the parent and the principal discussed changes to the IEP during a Zoom meeting held on October 10, 2022. The district also argues that the parent "was well aware of the IEP meeting (purportedly held October 16, 2022) because she agreed to the date and time via text messages, and she attended."

However, there is no record of the parent having notice of an IEP meeting to be held on October 16, 2022, nor of an IEP meeting even occurring on October 16, 2022. Text messages indicate the parent did agree to a *phone conference* (the parent asks, "Is it just a phone

conference?" to which the district replies "Sure we can do that.") to be held on October 18, 2022, yet, there is no further documentation provided that indicates that this meeting occurred either, and regardless, this purported meeting also failed to produce a written document, signed by the parent and the agency amending the student's IEP as is required under K.S.A. 72-3429(b)(4)(A) & (B). There is also no document provided that shows the district sent a notice of meeting to the parents.

Further, there is no signed consent for any changes to the student's IEP on any date and documents the district did provide only offer conflicting dates as to when a possible IEP meeting was held. Additionally, and most importantly, as the Committee notes above, there is no such thing as a "technical violation" under IDEA. Perhaps the district is referring to what has been termed a "procedural violation." This was not a procedural violation. The district was, by law, required to obtain written consent from the parent for any substantial change in placement of the student and the district failed to do so. Even if the Committee accepted this failure to be a procedural violation, the Committee would find it to also be a substantive violation, under K.S.A. 72-3413(g)(2)(B) because this violation significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education.

Second, the district argues that the principal "believed that the student was still subject to the prohibition of being within 1000 feet of District property as of December 9, 2022" and was therefore just "continuing [the student] in [the student's] placement as agreed in the October 10th and October 16th meetings." In evidence of this belief the district offers an e-mail from the principal to the parents dated December 9, 2022, which states that the student's "condition to not be on USD 340 property is still in effect." However, a timeline of events, also offered by the district, notes that on December 7, 2022, "a new court order was enacted dropping the restriction of not being on USD 340 property." Again, conflicting reports, presented by the district, lead the Committee to agree with the investigator, that "the district and the parent agree, and documents showed, that the student's court conditions permitted him to attend school after December 7, 2022." In any case, without written consent to change the placement of the student, regardless of the principal's belief or the purpose of any meeting, the student's IEP could not be changed without written consent from the parents.

Therefore, the Committee sustains the investigators finding that the district changed the IEP through administrative directive without notice of a meeting, an IEP meeting, or without prior written notice of the changes.

Issue Three: The district disagrees with the Investigator's finding that "the district failed to provide an appropriate IEP for the upcoming school year thorough the student's graduation in May 2024" for the following reason:

1. The district argues that the finding is premature because although an IEP meeting was held on May 9, 2023, and "all documents pertaining to the meeting were provided", including a PWN, "to date, the parents have failed to respond." The district further argues that under K.S.A. 72-3430(b)(6), "the district must provide the PWN to the parents by making at least two contacts by at least two different methods" after which, without a response from parents, the district is permitted to initiate the changes discussed in the IEP meeting.

The district argues that the investigators finding that the district failed to provide an appropriate IEP for the upcoming school year through the student's graduation in May 2024 is premature. The Committee agrees.

As the district notes, a meeting was held with the parents on May 9, 2023, in which "all documents pertaining to the meeting were provided", including a PWN. Under IDEA, an IEP does not cease to exist simply because the timeline for an annual review has come and gone, but rather the original IEP remains in effect. In this case, the student's annual review was to be completed by May 15, 2023. Documents show, and the investigator found, that an IEP meeting was held on May 9, 2023, compliant with the annual review timeline prescribed under IDEA. Documents also show that the district sent a PWN to the parents on May 10, 2022, as is required, and are awaiting parents' response and consent.

Under K.S.A. 72-3429(f)(1)–(2), "each agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate." The Committee finds that the district and the parents are in the process of that annual review. Therefore, the Committee overturns the investigators finding that "the district failed to provide an appropriate IEP for the upcoming school year thorough the student's graduation in May 2024."

Issue Four: The district disagrees with the Investigator's finding that "the district failed to follow the discipline procedures as outlined in IDEA when removing the student from school" for the following reason:

1. The district argues that the IDEA discipline provisions do not apply because the student "was never removed from school" because "the March 3, 2023, agreement between the parties was to ***avoid*** disciplinary action and to allow the student to remain enrolled", similar to "the type of agreement available to general education students when they are in danger of being sent to a hearing for either long-term suspension or expulsion." Further, "had the parties not reached that agreement, then the student would have been eligible for all of the IDEA disciplinary protections."

In its appeal the district notes that it "offered the student the same type of agreement that is offered to all general education students to allow the student to ***avoid*** disciplinary action and remain in school", citing that disciplinary provisions do not come into play as the student was not being "*referred* for long-term suspension or expulsion." Similarly, in her report, the investigator states that "IDEA's discipline provisions apply to the students with disabilities who have code of conduct violations that warrant the consideration of long-term suspension or expulsion *at the point the district determines to hold a hearing*." The Committee would like to take this opportunity to clear up confusion surrounding this issue.

Under IDEA, disciplinary provisions attach to a student with a disability at the point that the decision is "*made* to make a removal that constitutes a change in placement of a child with a disability because of a violation of a code of student conduct." 34 C.F.R. 300.530(h). This decision is made when a hearing office makes the decision to long- term suspend or expel the student, not when the district decides to refer the student or hold a hearing. At the point the decision is made to change placement *then*, as noted by the investigator, a district must provide discipline provisions of IDEA: to notify the parents of their rights, to ensure that the student's services are in place after the 11th day as determined by the IEP team, and to meet with the IEP team."

Additionally, the Committee notes that a district has discretion to come to an agreement with parents of a student with a disability for an alternative to long-term suspension or expulsion. In this case, the district had the option to refer the student for a disciplinary hearing given the violation of the student code of conduct. When such a situation arises, and both parties agree, it may be in the best interest of the student to remain enrolled in the district but to attend though an alternative setting. The Committee finds that this type of alternative agreement should be encouraged in order to maintain relationships between parties, when in the best interest of the student.

Therefore, because a decision had not been made to change the placement of the student, the Committee overturns the investigators finding that "the district failed to follow the discipline procedures as outlined in IDEA when removing the student from school."

CONCLUSION

The Appeal Committee concludes that the investigator did not err in her finding that there was, "a violation of FAPE due to a failure to implement the September 16, 2022, IEP and all corrective action pertaining to issue one is upheld.

The Appeal Committee concludes that the investigator did not err in her finding that the student's September 16, 2022, IEP was changed "through administrative directive without notice of a meeting, an IEP meeting, and without prior written notice of the changes" and all corrective action pertaining to issue two is upheld.

The Appeal Committee concludes that the investigator did err in her finding that that "the district failed to provide an appropriate IEP for the upcoming school year through the student's graduation in May 2024" and all corrective action pertaining to issue three is reversed.

The Appeal Committee concludes that the investigator did err in her finding that "the district failed to follow the discipline procedures as outlined in IDEA when removing the student from school" and all corrective action pertaining to issue four is reversed.

SUSTAINED CORRECTIVE ACTION

1. Within 15 calendar days of the date of this report, the district 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.300.101 requires that FAPE must be available to all children between the ages of 3 and 21, including children who have been suspended or expelled as provided for in 300.530(d).
    b. Comply with federal regulations at 34 C.F.R. 300.503 that require prior written notice for special education actions.
2. By June 30, 2023, the district will submit an assurance that they will offer to the parents the following services during the 2023-24 school year: (a) 130 minutes each week of direct academic support for the student's upcoming English class;
2. (b) 15 minutes of social work services each week to couch the student on perseverance to complete any assignments and negotiate personal interactions that he finds frustrating and (c) 4,536 minutes of compensatory education and

related services (16.8 weeks from December 12, 2022 to May 9, 2023 at 270 resource room minutes) till the time of the student's May, 2024 graduation as described below:

a. The parents can refuse some, none, or all of the compensatory education offered by the district.
b. The content of the compensatory education and related services shall be to be determined by the parent and the student, directed toward the student's 2022-2023 IEP goals of (a) stress reduction and conflict resolution skills, (b) interpersonal communication to avoid conflict and (c) organization of school work; or toward the student's success in academic courses, technical courses or transition activities.
c. Compensatory education may be completed during the 2023 summer and 2023-24 school year if the parent agrees.

3. By June 30, 2023, USD #340 will submit (a) an assurance of the 4,536 minutes compensatory education minutes accepted by the parent, and (b) a plan to have bi-weekly supervisory monitoring that the direct services in the IEP and the agreed upon compensatory education are being implemented during the 2023- 2024 school year.
4. By October 15, 2023; December 15, 2023; and March 15, 2023, the district will submit updates on the student's educational services being provided, as shown in the supervisory plan.
5. By July 15, 223, the district will submit a plan to review prior written notice and placement requirements with new and veteran staff including the staff at the student's school at the August 2023 professional development to ensure that staff understand that prior written notices must be sent upon completion of an IEP or an IEP amendment, regardless of the circumstances of that meeting. Professional development materials, agendas, and attendance will be submitted to SETS within 30 days if the completion of the training.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 6th day in July, 2023.

APPEAL COMMITTEE:

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,
Mark Ward: Attorney, Special Education and Title Services,
Ashley Niedzwiecki: Attorney, Special Education and Title Services,

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #437
ON MAY 10, 2023

DATE OF REPORT June 9, 2023

This report is in response to a complaint filed on behalf of the student by their parents, the parent. In the remainder of the report, the student will be referred to as "the student." The parent will be referred to as "the parents."

The complaint is against USD #437, Auburn Washburn Public Schools. In the remainder of the report, USD #437 will be referred to as, the "school," the "district," and the "local education agency" (LEA) shall refer to USD #437.

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 May 10, 2023. The date of this report is within the 30-day timeline by sending this report on June 9, 2023.

Investigation of Complaint

Crista Grimwood, "Complaint Investigator", spoke to the parent by telephone on May 10, 2023, to clarify the issues in the complaint and on May 22, 2023, to clarify the collection of evidence.

The Complaint Investigator interviewed Jaime Callaghan USD #437 Executive Director of Student Support Services, on May 17, 2023. The Complaint Investigator also interviewed the education team that works with the student that is the focus of this complaint. The interview, on May 18th, 2023, with said education team included, Jacob Okrulik, special education teacher, Cheryl Fewell, general education social studies teacher, Andrea Norman, general education ELA and Math teacher, Andrea York, Dean of Students, Marc Sonderegger, School Principal, Anna Calven (Gifted Education Teacher) was not present for this interview.

The Complaint Investigator emailed parent(s) follow-up interview questions on May 22, 2023.

The Complaint Investigator also received emails and supporting documents from the parent and USD #437 between May 10, 2023, and May 22, 2023.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainant and district. Additional documentation was provided and reviewed, and the following materials were carefully read and used as the basis of the findings and conclusions of the investigation.

Documents and Reports Reviewed:

- IEP Amendment Between Annual Meetings Request 10/5/2022.
- Prior Written Notice to parents 10/12/2022
- Notice of Meeting to parents 11/28/2022IEP Amendment Between Annual Meetings Request 12/12/2022.
- Prior Written Notice to parents 10/12/2022
- Prior Written Notice to parents 12/12/2022
- Notice of Meeting to parents 02/22/2023
- Evaluation Team Report 02/28/2022
- Eligibility For Special Education Pronged Report 02/28/2023.
- IEP dated for 02/28/2022.
- DRAFT IEP dated for 04/17/2023.
- Prior Written Notice to parents 03/01/2023
- Notice of Meeting to parents 05/02/2023
- IEP at-a-glance from full IEP dated 02/27/2023.
- Progress Report(s) for Goal #1 (Gifted Goal) Dated 3/10/2023, 12/16/2022, 10/14/2022, 05/25/2022.
- Progress Report for Goal #2 (IDEA/Behavior) Dated 03/03/2023, 1/02/2023, and 5/17/2022. October 2022 Progress was not indicated for Goal#2
- Daily Behavior Logs for the following Weekly Date(s) of:
    1. October 26, 2022
    2. November 1, 2022
    3. November 22, 2022
    4. December 8, 2022
    5. March 27, 2023

Email Correspondence:

- Email from parent to Andrea York (Dean of Students) dated October 26, 2022, at 9:39 AM.
- Email from Andrea York to parent dated October 26, 2022, at 2:39 PM.
- Email from parent to Andrea York and CC' d Jacob Okrulik (Special Education Teacher) dated October 26, 2022, at 5:33PM.
- Email from Jacob Okrulik to parent dated October 31, 2022, at 4:01 PM.
- Email from Jacob Okrulik to parent dated November 1, 2023, at 3:01 PM.
- Email from parent to Jacob Okrulik dated November 1, 2022, at 6:50 PM
- Email from Jacob Okrulik to parent dated November 2, 2022, at 4:04 PM.
- Email from Jacob Okrulik to parent dated November 4, 2022, at 4:01 PM.
- Email from parent to Jacob Okrulik dated November 5, 2022, at 7:06 AM.
- Email from Jacob Okrulik to parent dated November 7, 2022, at 4:32 PM.
- Email from parent to Jacob Okrulik dated November 7, 2022, at 5:30 PM.
- Email from Jacob Okrulik to parent dated November 8, 2022, at 8:46 AM.
- Email from parent to Jacob Okrulik dated November 8, 2022, at 8:48 AM.
- Email from Jacob Okrulik to parent dated November 8, 2022, at 4:07 PM.
- Email from Jacob Okrulik to parent dated November 14, 20228, 2022 at 6:01 PM.
- Email from Jacob Okrulik to parent dated November 9, 2022, at 3:21 PM.
- Email from Jacob Okrulik to parent dated November 10, 2022, at 3:41 PM.
- Email from Jacob Okrulik to parent dated November 11, 2022, at 4:12 PM.
- Email from Jacob Okrulik to parent dated November 14, 2022, at 3:37 PM.
- Email from Jacob Okrulik to parent dated November 16, 2022, at 4:12 PM.
- Email from Jacob Okrulik to parent dated November 21, 2022, 4:15 PM.
- Email from parent to Jacob Okrulik dated November 21, 2022, at 5:26 PM.
- Email from Andrea Norman to Jacob Okrulik dated November 21, 2022, 6:34 PM
- Email from Jacob Okrulik to Andrea Norman and parent dated November 22, 2022, at 4:13 PM.
- Email from Jacob Okrulik to parent dated December 8, 2022, at 3:36 PM.
- Email from Jacob Okrulik to parent dated December 9, 2022, at 4:00 PM.
- Email from Jacob Okrulik to parent dated December 12, 2022, at 3:44 PM.
- Email from Jacob Okrulik to parent dated January 5, 2023, at 3:31 PM.
- Email from parent to Jacob Okrulik, Marc Sonderegger and Andrea York dated January 5, 2023, at 4:42 PM.
- Email from Jacob Okrulik to parent dated January 6, 2023, at 3:43 PM
- Email from Jacob Okrulik to parent dated January 9, 2023, at 4:03 PM.
- Email from Jacob Okrulik to parent dated January 10, 2023, at 3:37 PM.
- Email from parent to Jacob Okrulik dated January 11, 2023, 5:22 AM.

- Email from Jacob Okrulik to parent, Marc Sonderegger, and Andrea York dated January 11, 2023, at 3:40 PM.

Background Information

This investigation involves an 11-year-old student who is enrolled in the district as a fifth-grade student. The student was originally found eligible for Gifted Education services on January 8, 2019, due to the student's overall Extremely High intellectual abilities. Additionally, the student was found to be twice exceptional with the eligibility indicator of Other Health Impairment due to being diagnosed with Attention Deficit Hyperactivity Disorder, Sensory Processing Disorder, and Anxiety. Both the parents and the school report that the student does exhibit times of emotional dysregulation that hinders the student's performance compared to that of same aged peers. Documentation, teacher observations, and data collection that was provided by both the parents and the school illustrate that when the student is presented with non-preferred tasks or a situation in which the student perceives that a mistake was made within the student's response or work, the student will sometimes become emotionally dysregulated. Further, the Present Levels within the IEP also indicate that when "given time to decompress, [the student] can become calm and typically rationalize a socially appropriate response."

It is reported that when this emotional dysregulation occurs, the student tends to perseverate on the student's perspective of the issue and struggles to engage in listening to another person's point-of-view. These issues have been addressed by the IEP team within the Accommodation/Modifications, IEP Goals, and Services pages. Specifically, as it pertains to the scope of this investigation, the student break accommodation option in place, in order for the student to deescalate and/or reregulate their emotions.

The IEP team arrived at specific accommodations and modifications to address the social, emotional, and academic needs of the student. According to the student' IEP, the student is to receive a break "when [the student's] emotions are unregulated." The IEP failed to state that the student is to receive a break "when requested" or that the student must be permitted to take scheduled breaks.

ISSUE ONE: The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to implement the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP as required by 34 CFR 300.323 (2) (ii).

Positions of the Parties

The complainant alleges that the district failed to meet its obligation to implement the student's IEP, specifically the accommodations in accordance with the IEP as required by 34 CFR 300.323 (2) (ii). The parent claims that the student was refused breaks by general education staff upon request by the student. The parent further attests that the denial of the breaks is contributing to the increase of the depth and breadth of the student emotional dysregulation.

The district refuted this allegation, stating that school personnel working with the student utilized their professional discretion by delaying the break due to being in the middle of teaching a new concept and/or attempting to establish a cohesive relationship with the student as opposed to denying the break. The district supported that statement with district behavioral log documentation that provides evidence that a break was honored prior to whole group instruction or when there was a natural transition for the classroom teacher to attend to the student's emotional dysregulation.

The district further responded that the student often struggles with reintegrating back into the classroom after breaks as they feel that they have "missed out" on something that their same aged peers had access to. Thus, triggering an additional behavioral dysregulation.

The parent argues this and states that had the school been following her student's IEP, by allowing the breaks to occur when requested by the student this perpetual issue would be eliminated. The school further refutes this allegation and argues that if the parent's would consent to a formal functional behavioral assessment and behavior intervention plan, the IEP team would then be able to better determine the function of the behavior and when to mitigate in a strategic manner.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent, and staff in the district.

The parent provided copies of the most recent implemented IEP (the IEP team is continuing to operate from the IEP dated 02/28/2022) along with email correspondence from school personnel that includes a behavior summary starting October 26, 2022, through February 2, 2023. Within those emails, the parent indicated where breaks were allegedly denied. These incidences were cross referenced with documentation provided by the district and the following communication evidence emerged:

Investigator Analysis:

November 4, 2022: Mr. Okruhlik reported that the student only came to his room for his scheduled social group time and that the student self-reported that the student had had a good day.

Parent responded that the student said that the student did not get a morning break before social studies because "he had too much work to make up from yesterday".

District notes indicate that the student did not have a break.

In this case there is no indication from the parent or the district that the student was unregulated. Further, the IEP does not specify that scheduled breaks are required, and therefore the student is not required to get a before social studies break. Because the student was not unregulated the student was not entitled to a break at this time.

Therefore, the student ***was not*** denied a break.

November 8, 2022: Mr. Okruhlik reported that he didn't "believe he saw [the student] today", because he was out of the room and there was a sub covering his class.

Parent reported that the student said he didn't get to go to break "because he was taking a test and had a score of 11 when ranked 1-10 though".

Districts notes indicate that the student did not have a break.

On this day Mr. Okruhlik reports that the student did not take a break to his knowledge and the district log indicates the same. Again, according to the student's IEP, the student

is only eligible for a break when the student is unregulated. By the student's own admission, he was taking a test and that is why he did not go on a break. There is no indication that the student was unregulated.

Therefore, the student ***was not*** denied a break.

January 5, 2023: Mr. Okruhlik stated that he did not see the student for breaks on January 5th.

The parent responded that the student was "frustrated in science and told the teacher", but was not allowed to go to see Mr. Okruhlik to "cool down". This resulted in the student stabbing himself in the forehead with a ruler because he "was so frustrated and couldn't leave because he would get in bigger trouble". The parent also reported that there was still a mark on the student's forehead after school.

Interviews with the district staff indicated that the student was using the ruler inappropriately, however, did not appear to be dysregulated, but rather was attempting to seek adult attention. This is evidenced by the student vocalizing that he was going to hurt himself with the ruler if he was not allowed to leave the classroom.

The districts records indicate that the student did not have a break.

In this case, the student reported that he was frustrated and was not permitted a break. This resulted in the student self-harming as a means to avoid an undesirable task. Further, there is nothing in the district records to indicate that the student's required seeing the school nurse or that a call to the parents was required as a result of the student using the ruler inappropriately.

After speaking to both parties, the investigator found, in this situation, that the student's emotions were not considered to be unregulated, however, the student did express that they were frustrated, which according to the student's IEP, triggers a break, and the teacher used their discretion.

Therefore, the student ***was*** denied a break.

January 11, 2023: Mr. Okruhlik reported that the student was running at the teacher, yelling, and waving his red card in the air about not being able to take a break because "he was supposed to fill out his test." The teacher felt that the student was trying to "get out of bowling left-handed", due to an injury on his right hand, and "she didn't let him

take a break at that time because of the perceived avoidance". Following the teacher's directive to continue with the bowling activity, the student then began to bite his hand and hit his head on the wall "to show that he was in need of a break."

Documents also show that the student spoke to Mr. Okruhlik and that the student discussed the appropriate way to ask for a break.

District notes only indicate that the student took one 10-minute pre-social studies break on January 11th.

In this case, while the student was using the non-verbal cards to indicate that a break was required the teacher perceived this as task avoidance, as evidenced by the student attempting to escalate himself after being told that he still needed to complete the task. However, the IEP is not clear on how "unregulated" behavior presents and a reasonable person would believe that the student was displaying behaviors that would trigger a break.

Therefore, the student ***was*** denied a break.

January 17, 2023: There is no communication from Mr. Okruhlik on this day.

The principal, Mr. Sonderegger, emailed the parents about an incident in band class in which the student became upset after being told his seating assignment by the band teacher. The principal states that "[The student] didn't like where he was asked to sit so, he asked for a break." The teacher then responded that she "would prefer he not take a break because he missed all of band during the last band day because he was on a break" The student then began to hit his head against a chair and threw the chair. The principal said he asked the band teacher why she was "reluctant" to have to the student take a break and the teacher said it was because band is difficult to "make up".

District records indicate that the only break the student took on January 17th was his pre-social studies 10-minute break.

While teachers may have some discretion as to whether a student is unregulated, triggering the need for a break, in this case, a reasonable person would likely perceive the student as being unregulated at the time of throwing a chair. Due to the teacher stating that "she did not want the student to take a break because band is "difficult" to "make-up" indicates that the teacher was not considering the student's state of mind but rather her own need for the student's attendance in band. Therefore, the teacher

denied the student a break when a reasonable person would have found the student was likely unregulated.

Therefore, the student *was* denied a break.

Applicable Regulations and Conclusions

According to 34 CFR 300.323 (c)(2) each public agency is responsible for ensuring that special education and related services are made available to the child in accordance with the child's IEP. Additionally, each provider must be informed of their specific responsibilities related to implementing the child's IEP. This includes the specific accommodations, modifications, and supports that must be provided to the student. (34 CFR 300.323 (d)(2)(i) & (ii)).

In this case, the district has an obligation to implement the student's IEP, including the accommodation that involved permitting the student to access breaks "in order to regulate [the student's] emotions," as indicated on the February 28, 2022, IEP, "when [the student's] emotions are unregulated."

As indicated above, the parent did provide five incidences in which they felt that the student's break was denied, however, evidence shows that the student was not "unregulated" on four of the five incidences, and therefore did not trigger the requirement for a break. On January 17, the student did trigger the requirement for a break. However, there does not appear to be a pattern in denial of breaks, nor any lack of understanding of informing teachers as to their specific responsibilities regarding the student's IEP. Additionally, documentation indicates the student is allowed to take a break as specified in the student's IEP ("in order to regulate [the student's] emotions").

Therefore, based on the foregoing, according to IDEA and Kansas special education laws and regulations, it *is* substantiated that the district violated state and federal regulations for failure to implement the student's IEP by denying breaks when the student was unregulated.

ISSUE TWO: The district, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) failed to report progress on IEP goals within the same intervals as general education students receive grade cards as required by 34 CFR 300.320(a)(3)(i) & (ii)

Positions of the Parties

The complainant alleges that the district failed to report progress on the student's IEP goals in a timely manner that is commensurate with quarterly general education grade card reporting. While the parent agrees that communication between home and school are ongoing, progress, as it specifically relates to IEP Goal #2, that addresses the student's social and emotional behavior, was not reported in a manner outlined in the IEP. The goal states," When in social situations, [the student] will be able to accept ideas different from [the student's] own, negotiate with peers, respond to constructive criticism, join activities with peers, and make positive statements about self at least 75% of the time as indicated on a 4 point rating scale completed by [the student's] classroom teacher every 2 weeks by the end of the IEP as measured by Rubrics."

The district agrees that it did omit reporting progress regarding Goal #2 for the October 2022 reporting period, however, argues that this is not a failure in keeping the parent abreast of the most recent progress as the provider responsible for this goal communicated with parent on an almost daily basis. The parent and the district provided a substantial number of email correspondences between the parent and the student's case manager. The communication between the provider and the parent included a running dialogue as it related to the student's behavior, breaks that were taken, the duration of the breaks, and various other anecdotal records of the student's day.

The parent agrees that they did receive regular communication from the special education teacher, however, they did not feel that the communication spoke specifically to Goal #2 and the progress, or lack-thereof, which was a concern.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in the district. The following are the dates that progress and anecdotal records was shared with the parents:

- Progress Report(s) for Goal #1 (Gifted Goal) Dated 3/10/2023, 12/16/2022, 10/14/2022, 05/25/2022.
- Progress Report for Goal #2 (IDEA/Behavior) Dated 03/03/2023, 1/02/2023, and 5/17/2022. October 2022 Progress was not indicated for Goal#2
- Daily Behavior Logs for the following Weekly Date(s) of:
    1. October 26, 2022
    2. November 1, 2022
    3. November 22, 2022
    4. December 8, 2022
    5. March 27, 2023
- Email from parent to Andrea York (Dean of Students) dated October 26, 2022, at 9:39 AM.
- Email from Andrea York to parent dated October 26, 2022, at 2:39 PM.
- Email from parent to Andrea York and CC' d Jacob Okrulik (Special Education Teacher) dated October 26, 2022, at 5:33PM.
- Email from Jacob Okrulik to parent dated October 31, 2022, at 4:01 PM.
- Email from Jacob Okrulik to parent dated November 1, 2023, at 3:01 PM.
- Email from parent to Jacob Okrulik dated November 1, 2022, at 6:50 PM
- Email from Jacob Okrulik to parent dated November 2, 2022, at 4:04 PM.
- Email from Jacob Okrulik to parent dated November 4, 2022, at 4:01 PM.
- Email from parent to Jacob Okrulik dated November 5, 2022, at 7:06 AM.
- Email from Jacob Okrulik to parent dated November 7, 2022, at 4:32 PM.
- Email from parent to Jacob Okrulik dated November 7, 2022, at 5:30 PM.
- Email from Jacob Okrulik to parent dated November 8, 2022, at 8:46 AM.
- Email from parent to Jacob Okrulik dated November 8, 2022, at 8:48 AM.
- Email from Jacob Okrulik to parent dated November 8, 2022, at 4:07 PM.
- Email from Jacob Okrulik to parent dated November 14, 20228, 2022 at 6:01 PM.
- Email from Jacob Okrulik to parent dated November 9, 2022, at 3:21 PM.
- Email from Jacob Okrulik to parent dated November 10, 2022, at 3:41 PM.
- Email from Jacob Okrulik to parent dated November 11, 2022, at 4:12 PM.
- Email from Jacob Okrulik to parent dated November 14, 2022, at 3:37 PM.
- Email from Jacob Okrulik to parent dated November 16, 2022, at 4:12 PM.
- Email from Jacob Okrulik to parent dated November 21, 2022, 4:15 PM.
- Email from parent to Jacob Okrulik dated November 21, 2022, at 5:26 PM.
- Email from Andrea Norman to Jacob Okrulik dated November 21, 2022, 6:34 PM
- Email from Jacob Okrulik to Andrea Norman and parent dated November 22, 2022, at 4:13 PM.
- Email from Jacob Okrulik to parent dated December 8, 2022, at 3:36 PM.

- Email from Jacob Okrulik to parent dated December 9, 2022, at 4:00 PM.
- Email from Jacob Okrulik to parent dated December 12, 2022, at 3:44 PM.
- Email from Jacob Okrulik to parent dated January 5, 2023, at 3:31 PM.
- Email from parent to Jacob Okrulik, Marc Sonderegger and Andrea York dated January 5, 2023, at 4:42 PM.
- Email from Jacob Okrulik to parent dated January 6, 2023, at 3:43 PM
- Email from Jacob Okrulik to parent dated January 9, 2023, at 4:03 PM.
- Email from Jacob Okrulik to parent dated January 10, 2023, at 3:37 PM.
- Email from parent to Jacob Okrulik dated January 11, 2023, 5:22 AM.
- Email from Jacob Okrulik to parent, Marc Sonderegger, and Andrea York dated January 11, 2023, at 3:40 PM.

Applicable Regulations and Conclusions

According to 34 CFR 300.320(a)(3)(i) & (ii), an IEP must include a description of 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.

As evidenced by the record, and acknowledged by the district, progress reporting on Goal #2 was omitted from the October 2022 report. According to OSEP guidance, "the specific times that progress reports are provided to parents and the specific manner and format in which a child's progress toward meeting the annual goals is reported is best left up to the State and local officials to determine" (Federal Reg. Vol. 71, No. 156, pg. 46664). As articulated in the evidence provided by both the parent and the district, the parent was kept abreast of the student's performance on a consistent basis.

The parents do acknowledge that the school provided reports on the student's day/breaks, however, the parents also state that these reports were not specific to Goal #2 and therefore should not count as progress reporting. The district does not dispute this.

In this situation, the student's IEP does stipulate that progress reports will be provided to the parent on a quarterly basis. When reports will be provided is a required element of a student's IEP under 34 CFR 300.320(a)(3)(ii), and as such a district is required to adhere to the timeline provided in the student's IEP. While the investigator found that the communication between the district and the parent was relevant to the student's day, there is no indication that the communication provided the parent with a report on

the student's actual progress. Further, although OSEP guidance does state that a district has discretion as to the "manner and format" of reporting on a student's goals, the district must still adhere to the student's IEP reporting schedule. Given that, in this case, the student's IEP required the district to provide quarterly progress reports, and the district failed to provide those reports for the quarter ending in October 2022, the district did violate state and federal special education laws.

Therefore, a procedural violation of federal and state laws and regulation *is* substantiated.

Corrective Action

According to 34 CFR 300.323 (c)(2) each public agency is responsible for ensuring that special education and related services are made available to the child in accordance with the child's IEP. Additionally, each provider must be informed of their specific responsibilities related to implementing the child's IEP. This includes the specific accommodations, modifications, and supports that must be provided to the student. (34 CFR 300.323 (d)(2)(i) & (ii)).

As a result, KSDE is requiring that, no later than December 2023 (to allocate time for data to be collected and reviewed by the IEP team), a complete Functional Behavioral Assessment and Behavior Intervention Plan be completed and become part of the student's IEP. Specifically, addressing how the student presents when they become dysregulated, a clear and concise plan of action regarding how the staff will respond, the duration of the intervention, and location.

According to 34 CFR 300.320(a)(3)(i) & (ii), an IEP must include a description of 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.

As a result, KSDE is requiring that, no later than 10 calendar days after receiving this report, the district will send correspondence to all district special education providers two-weeks prior to each progress reporting period. In this case, according to district policy, as outlined within the IEP, will occur four times per year, October, December, March, and May.

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.

Complaint Investigator

Dr. Crista Grimwood, Ed.D

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 #108
ON MAY 2, 2023

DATE OF REPORT JUNE 12, 2023

This report is in response to a complaint filed with our office by the parents on behalf of their daughter, the student. For the remainder of this report, the student will be referred to as "the student." The parents will be referred to as "the parents."

Investigation of Complaint

On May 5 and 18, 2023, the complaint investigator spoke via telephone with Rebekah Helget, Director of Special Education for the Learning Cooperative of North Central Kansas (LCNCK). The investigator also spoke by telephone with the student's parents on May 5, 2023.

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

- IEP for the student dated October 25, 2021
- Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated December 3, 2021
- Neuropsychological Evaluation dated January 2, 2022
- Letter dated February 1, 2022 from the student's primary care physician
- IEP Progress Report covering the period of December 17, 2021 through October 17, 2022
- 504 Plan dated August 16, 2022
- IEP for the student dated October 18, 2022
- Observation Notes dated November 2, 7, and 16, 2022
- Prior Written Notice for Evaluation and Request for Consent dated November 21, 2022
- IEP Progress Report covering the period of December 12, 2022 through May 10, 2023
- FastBridge Learning Report for the student for Spring 2022-23 school year
- CBM reading English Progress Monitoring Report for the period of September 19, 2022 through May 1, 2023

- Letter dated May 2, 2023 from the Medical Director of the private clinic where the student had received services
- i-Ready diagnostic reading assessment dated May 9, 2023
- Supporting materials sent to the investigator by the parents on May 19, 2023 including
    - videos,
    - photos,
    - images,
    - emails from the student to other students, and
    - email correspondence between the school counselor and the student's mother dated March 9, 2023.

Background Information

This investigation involves an eleven-year old girl who has just completed the fifth grade in her neighborhood school. The student began receiving speech services through Infant Toddler programming at age 2, transitioning to an IEP through the public school system at age 3.

According to the parents, the student demonstrated issues related to ADHD at the preschool level. The student was in another district and was assigned to the same teacher for 3 years (preschool, "kinder-prep," and kindergarten). The parents opted to have the student evaluated by an outside agency in order to provide that school district with information which they felt might lead to the provision of additional special education services. However, the family moved into the current district before special education services were considered.

According to the parents, they shared the outside evaluation report which documented "early signs of dyslexia" with the current school district in December of 2018. The parents state that they brought up the 2018 testing results "at every parent teacher meeting and every speech I.E.P." but "no one wanted to discuss this with us to agree to test her."

Issues

When discussing their complaint with the investigator during the telephone conversation of May 5, 2023, the parents stated that their overall concern centered on their assertion that the district had not adequately addressed the needs of the student. The parents contend that while the student has a 504 Plan, that plan does not provide any direct services to the student. The parents report that the student has on several

occasions voiced thoughts of suicide but no action has been taken by the district to address the student's emotional needs.

The parents' complaint identifies three examples of the district's alleged failure to fully address the student's needs.

Issue One: The district failed to fully implement the student's 504 Accommodation Plan.

Parents' Position

The parents assert that the district has failed to provide the student with accommodations specified in her 504 Plan including

- access to the school counselor;
- opportunities for journaling;
- daily check-ins; and
- one-to-one reading instruction, and access to a quiet space for calming.

Applicable Statutes and Regulations

A formal complaint must allege that a violation of *special education statutes or regulations* has occurred during the 12-month period prior to the date that the complaint is received by the commissioner of education (K.A.R. 91-40-51(a) and (b)).

Allegations regarding violations of Section 504 are investigated by the Office of Civil Rights. A special education complaint investigator does not have the authority to consider alleged Section 504 violations, so this concern was not considered as a part of this investigation.

Questions regarding violations of Section 504 may be directed to the Kansas City Office for Civil Rights - U.S. Department of Education at the following address:

One Petticoat Lane
1010 Walnut Street, 3rd floor, Suite 320
Kansas City, MO 64106
Telephone: 816-268-0550
FAX: 816-268-0599; TDD: 800-877-8339
Email: OCR.KansasCity@ed.gov

Issue Two: The district failed to address significant regression in skills resulting from a reduction in the level of speech/language services provided to the student.

Parent's Position

According to the parents, the student's family physician observed a regression in the student's speech/language skills when he saw the student in October 2021 and referred the student for an updated speech/language evaluation through an outside agency. The waiting list for evaluation was very long, and the outside evaluation was not completed until June 2022.

The parents opted to pay for outside speech/language services while waiting for the outside evaluation to be completed and then continued to pay for outside services through December 2022.

It is the position of the parents that the district did not address the skill regression identified by the family physician during the period when the student was waiting for an outside evaluation and did not discuss any increase in the time she was being seen by the speech/language pathologist at school. The parents contend that the private speech sessions (conducted during school hours) were causing the student to miss class time and resulted in the student staying inside from recess to catch up on missed work and missing out on "free, active, and social time she could have." The parents assert that this missed time would have been mitigated had the district increased speech/language support for the student.

District's Position

It is the position of the district that the choice to enroll the student in private speech sessions was made by the parents, both of whom were present for IEP meetings regarding the student's speech services in October 2021 and October 2022. The district contends that no request for additional speech services was made by the parents at either IEP team meeting.

The district asserts that the student has received 20 minutes of speech/ language services since October 2020 with no reduction in services. The district further contends that the student has shown no evidence of regression in articulation skills and has attained the annual goals established under her October 2021 and October 2022 IEPs.

Applicable Statutes and Regulations

The IEP for a student is to be reviewed at least once every 12 months to determine whether the annual goals for the student are being achieved and to revise the IEP as appropriate. The review and revision of the IEP is to address any lack of expected progress toward the annual goals as well as information provided by the parents (K.S.A. 72-3429(f)).

The parents of a child with an exceptionality have the right to request an IEP meeting at any time if they feel the IEP has become inappropriate for the child and revisions should be considered (K.S.A. 72-3429(f)).

Investigative Findings

The student has received special education speech services since preschool. On October 27, 2020, the student's services were reduced from 20 minutes three times a week to 20 minutes twice a week.

During the 12-month period covered by this complaint, the student has continued to receive speech/language services to address articulation delays. The student's father participated in the development of the student's October 25, 2021 IEP. The student's mother participated in the development of the student's October 18, 2022 IEP. Both IEPs called for the provision of 20 minutes of pull-out speech/language services for 72 days during each of the 12-month periods covered by these IEPs (the equivalent of twice a week).

No evidence was presented by the parents to show that they had requested additional speech/language services for the student or that they had requested an IEP meeting to discuss regression in the student's speech/language skills. The speech/language pathologist who has been providing services to the student during the previous 12-month period reports that during a telephone call with the student's mother to schedule the October 2022 IEP annual review meeting, the parent did ask whether the pathologist planned to decrease the student's services but did not mention any increase in those services.

At the time the student's October 2021 IEP was developed, the student was reading multi-syllabic words with 80% accuracy and vocalic /r/ words with 65% accuracy. The following annual goal was established:

"By the end of the IEP period, [the student] will correctly produce /r/ words and multisyllabic words in conversational speech with 90% accuracy as judged by the SLP."

IEP progress reporting for the student showed that, by December 17, 2021, the student was able to produce /er/ and initial /r/ words in sentences with 90% accuracy. She was producing medial /r/ words in sentences with 85% accuracy.

By March 29, 2022, the student was producing /r/ blend words in sentences with 100% accuracy and /r/ and /er/ words in sentences with 95% accuracy. By May 6, 2022, the student was producing four-syllable vocalic /r/ words in sentences with 100% accuracy and all vocalic medial/r/ words in sentences with 95% accuracy. As of October 17, 2022, the student was producing all positions of /r/ while reading with 90% accuracy. She was producing /air/ and /er/ in sentences with 95% accuracy. She had achieved 92% accuracy in sentence production of /or/, and 85% accuracy in /r/ while telling a story in conversation.

At the time of the annual IEP review in October 2022, the student was producing the /r/ sound correctly 85% of the time in conversational speech and was producing words with 4-5 syllables correctly 85% of the time. The following goal was established:

"By the end of the IEP period, [the student] will correctly produce r and multi-syllabic words in conversational speech with 95% accuracy as judged by the SLP."

IEP progress reports for the student show that the student was demonstrating 100% accuracy in the production of /r/ as of December 20, 2022. Reporting on March 20, 2023 showed that the student was producing

- /or/ while reading at 100%;
- /er/ while reading at 95%;
- /ear/ while reading at 100%; and
- /ar/while reading at 100%.

By May 10, 2023, the student was correctly producing 4-5 syllable words in sentences 98% of the time. She was reading /or/ and /er/ words correctly 95% of the time.

Summary and Conclusions

No evidence was presented to show that the parents requested an IEP team meeting to discuss the family physician's observations regarding a regression of the student's

speech/language skills. The parents participated in the development of two IEPs that outlined the services that were to be provided to the student over the 12-month period prior to filing this complaint. No evidence was presented to show that the parents requested an increase in speech/language services during that period.

IEP goal progress reports completed between May 2, 2022 and May 2, 2023 show that the student met or made progress toward attainment of the articulation goals outlined in her October 2021 and October 2022 IEPs.

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

Issue Three: The district has refused to evaluate the student to determine the need for support through an IEP.

Parents' Position

The parents assert that despite their repeated requests, the district has refused to evaluate the student in order to provide her with support through an IEP. In particular, the parents contend that the student has made suicidal comments which they believe could be addressed through an IEP that focuses on behavior. Additionally, it is the position of the parents that the student has received outside diagnoses of dyslexia, ADHD, and Anxiety which are not being addressed through special education services.

District's Position

It is the position of the district that the student is able to access and make progress in the general education curriculum without special education services beyond the speech/language support she is currently receiving. The district asserts that the student is being provided with accommodations and support under a Section 504 Accommodation Plan. The district states that it has responded to the parents' request for evaluation by providing prior written notice of refusal to conduct an evaluation.

Applicable Statutes and Regulations

At 34 C.F.R. 300.39(a), federal regulations define "special education" as "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability." "Specially designed instruction" is defined, at 34 C.F. R. 300.39(3)(ii)), as "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction...to ensure access of the child to the general

curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children."

In order to receive special education and related services through an IEP, a student must be adversely affected or impacted to the level the student is incapable of performing at grade level when provided with educational instruction at that grade level.

At 34 C.F.R .300.502(c), federal regulations state that IEP teams are required to consider parent-initiated evaluations presented to the team by a parent. However, the IEP team is not obligated to adopt or implement any of the recommendations made by an outside evaluator.

A parent may request an evaluation at any time. The request may be oral or written. The school may refuse to conduct the evaluation. Under that circumstance, a Prior Written Notice form should be provided to the parent explaining why the school refuses to conduct the evaluation (K.S.A. 72-3440(b)(2)(B)).

Investigative Findings

During parent/teacher conferences in October of 2021, the parents spoke with the student's classroom teacher about concerns regarding behavior they had observed in the home. The classroom teacher took the parents' concerns to the building level Student Assistance Team.

The team discussed the student's school performance and determined that she was making progress with the school-wide multi-tiered system of support (MTSS) interventions that were already in place. The teacher reported that she did not observe any concerning behaviors in the school setting. The team determined that there was no demonstrable need for a special education-related evaluation at that time. On December 6, 2021, the school psychologist completed and sent to the parents prior written notice of the district's refusal to conduct an evaluation.

According to the prior notice form,

> *"It is proposed to refuse to conduct an initial evaluation for special education services as [the student] is able to access and make progress in the general education setting without a need for specially designed instruction. She currently has an IEP for speech/language needs but this is not affecting her progress in academic areas. She is demonstrating average performance and increasing skills with MTSS interventions.*

Additionally, accommodations available through general education are appropriate to enable her appropriate access to the general education curriculum...

It was considered to conduct an initial evaluation of skills. This option was rejected as [the student] is able to access and make progress in the general education setting without a need for specially designed instruction. Staff do not see a need for specially designed instruction targeting skill deficits to allow [the student] access to general education curriculum."

By the time this notice was received, the parents had already made the decision to have the student retested by an evaluator outside the school district. This second evaluation was completed by Flint Hills Neuropsychology in December of 2021. The report of that evaluation documents diagnoses of ADHD, moderate dyslexia, and mild dyscalculia, and, according to the parents "documents anxiety quite often."

The parents opted to pursue Occupational Therapy (OT) and speech services for the student through an outside agency in addition to outside therapy for emotional needs.

The parents state that the report of the evaluation was provided to the building principal, the student's classroom teacher, and the district superintendent. A 504 Accommodation Plan was developed for the student, but the student was not referred for a special education evaluation.

When the student's 504 Plan was updated on August 16, 2022, the team documented that "[The student] can be overwhelmed in the classroom. The major life activity that is limited is her ability to focus and maintain low stress levels. [The student's] reading progress could also be limited due to dyslexia. Flipping words is one of her tendencies."

Under the 504 Plan, the student was to receive the following accommodations:

- Accessibility to the school counselor through daily check ins; small group and individual sessions; and journaling;
- Accessibility to a quiet room between 5th and 6th grade classrooms when feeling anxious or when she needs a quiet place to work;
- calming room or other suitable quiet spot; and
- one-on-one reading instruction in phonological decoding three times a week for 15 minutes per session with the "at-risk teacher."

In late September or early October 2022, the student's mother contacted the building principal by telephone to request a meeting. According to the building principal, the student's mother expressed concerns about the school work the student was missing while participating in outside therapy and the homework that was resulting from her absences.

The building level student support team met with the parents on October 5, 2022 to discuss the parents' concerns, including additional issues related to the student's behavior at home and the student's reading and organizational skills. At the meeting, it was decided that the student could utilize the building's after school program to get her homework done.

At the October 5, 2022 meeting, school staff reported that they had no concerns with the student's academic performance or her school behavior and felt that the student was making progress with the accommodations outlined in her 504 Plan along with MTSS interventions.

Following the October 5, 2022 meeting, the classroom teacher asked the school psychologist to observe the student. The school psychologist conducted three classroom observations. On each occasion, he saw no concerns and noted that the student appeared to be functioning on a level with her same age peers.

A system was developed to monitor the student's self-reporting of her emotional status. The student was asked to check to indicate whether she was feeling "high stress," "frustrated," "nervous," or "calm." Over a one month period, the results were as follows:

- high-stress: 0%;
- frustrated: 1.25%;
- nervous: 0%; and
- calm: 98.75%.

The building principal asked the director of special education to accompany her on a visit to the student's home to help clarify for the student's mother the purpose of special education services and the delivery of specially designed instruction. The principal and the director met with the student's mother in her home on November 16, 2022.

Following that meeting, the director instructed the school psychologist to send the parents prior written notice of refusal to conduct an evaluation to determine whether or not the student was eligible for and in need of special education services. According to

the director, even though the parents had not specifically requested an evaluation, the director felt that the refusal should be sent proactively since the parents had repeatedly expressed concerns about the student's home behaviors.

On November 21, 2022, the school psychologist sent prior written notice of refusal to conduct an initial evaluation to the parents by U.S. mail and email. According to the notice form,

> *"The proposal to evaluate [the student] for special education services is refused at this time. [The student] currently has a 504 Plan and an IEP for speech services. Concerns expressed by parents are in the areas of reading, organization, and social/emotional behaviors seen at home. The educational team proposes to continue with the plan in place including MTSS interventions in the area of reading. [The student] is able to access her general education classwork with accommodations in place. FastBridge winter testing will be completed in December which will be compared to fall testing. At this time the educational team is confident with the interventions and plan in place, but will analyze data collected from multiple data points from winter testing to determine if [the student] is making appropriate progress in comparison to peers.*
>
> *It was considered to conduct an evaluation of skills. This option was rejected as [the student] is able to access and make progress in the general education setting without specially designed instruction. Staff would like to continue with MTSS interventions and accommodations per 504 Plan along with comparing progress from fall and winter FastBridge scores once winter testing is complete. At this time staff do not see a need to pull her from general education to complete testing."*

The Grade 4 Progress Report shows the student's proficiency in 31 reading-related skills. The student has performed at level 2 ("developing") or 3 ("proficient") in all but 6 of those areas over the four quarters of the 2021-22 school year. The student demonstrated level 1 ("emerging") skills for one quarter in three areas but ended the school year performing at level 3 ("proficient") in the other three of those six areas. The student's skills with regard to reading with sufficient accuracy and fluency to support comprehension were judged at level 1 over all four quarters of the school year.

The student earned an overall grade of C+ for the year in Science and a B+ in Social Studies for the 2021-22 school year.

The Grade 5 Progress Report reflects the student's performance in 17 skills related to reading. The student has performed at level 2 in 15 of those areas over the first three

quarters of the 2022-23 school year. For the first two quarters of the year, the student demonstrated proficiency in determining a theme and summarizing a story, drama, or poem. However, she earned a 1 rating in that skill for the third quarter of the year. The student's skills with regard to reading grade level text with accuracy, fluency, expression, and purpose to support comprehension have been judged at level 1 over all three quarters of the school year.

The student has earned grades of A or A- for all quarters in the areas of Science and Social Studies.

According to the Spring report of the student's performance on FAST (Formative Assessment System for Teachers) measures, the student has made gains in her reading skills since third grade. Her overall reading skills are shown to be "on track" and place her at the 32%ile compared to district grade level peers, and at the 45%ile when compared to students in the same grade across the nation. The assessment of her phonemic awareness, phonics, and vocabulary skills placed her at the 45%ile compared to district grade level peers, at the 31%ile when ranked against grade level peers across the nation. These latter scores suggest she may need some additional support to improve these skills.

No significant delays are evident with regard to the student's CBM reading English Progress Monitoring Report during her fifth grade year.

The student has been receiving one-on-one support from a Title I reading teacher since February of 2022. By report of the teacher, the student has "grown in confidence both in her speech and in her reading" and has shown growth in the development of phonemic awareness skills. According to the Title I teacher, the student "routinely reads with 98% to 100% accuracy on grade level passages."

With regard to math skills, the FAST assessment shows that she is "on track" in overall mathematics skills and ranks within the average range when compared to grade level peers both within the district and across the nation. Her mastery of math facts places her at "some risk" and ranks her at the 27%ile compared to district peers, and at the 34%ile when compared to grade peers across the nation.

The student's classroom teacher provided the following statement:

> *"[The student] is almost always positive and ready for school. She likes routines and knows how our classrooms function daily. [The student] seems to feel safe and happy at school*

with her peers and teachers. In fact, she stays for after-school program to have a quiet place to work. The concerns voiced by the parent have not been witnessed or reflected in behaviors at school.

[The student] catches on to new concepts at the same rate as most of her peers in all academic classes. As with most fifth-grade students, [the student] is not always a self-starter and may need help knowing where to begin. Chunking and redirection for specific tasks are part of our daily routine. [The student] has the opportunity to move to a quiet location in our middle room for any tasks but seldom feels the need. However, during testing, we place her in this location with a few other students for a more focused environment.

We believe [the student] has had a successful and very positive school year. She is testing at grade level in all subjects, has friends, and is very respectful to peers and adults."

The parents have provided the investigator with a letter dated May 2, 2023 from the psychiatrist serving as Medical Director of the private clinic where the student has received services. According to that letter, the psychiatrist would "highly recommend [the student] have emotional and educational supports with IEP evaluation. A few examples could include: meeting with the counselor weekly, easy access to breaks during the day, extra help in math and reading including printed handouts and guides."

Summary and Conclusions

In addition to articulation delays which have been addressed since preschool, the student has, through evaluations completed at parent expense by private agencies, been given multiple diagnoses including ADHD, anxiety, dyslexia, and dyscalculia. When presented with reports of outside evaluations, the district considered the reports and developed a Section 504 accommodation plan to provide the student with support. That plan was last reviewed in August 2022.

The parents have continued to have concerns about the student's behavior in the home setting and have met with school staff to discuss those concerns. However, school staff have repeatedly told the parents that the behaviors - including the expression of suicidal thoughts - which have been reported from the home setting have not been observed in the school environment. At school, the student has appeared to feel safe and happy, has interacted successfully with peers and adults, and has been operating at grade level in all areas.

Special education is defined as "specially designed instruction to meet the unique needs of a child with a disability...to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." In the case of this student, neither the student's academic nor emotional needs have kept her from accessing or making progress in the general education curriculum. While no expression of suicidal thoughts should ever be ignored, the student is not currently demonstrating school-related delays that would warrant the provision of specially designed instruction.

The district has shown that it considered the results of outside evaluations as well as the parents' expressed concerns and provided the parents with the prior written notice of refusal to conduct an evaluation. The most recent letter from the psychiatrist who serves as Medical Director for the agency providing outside service to the student recommends counseling and academic supports which have been made available to the student under her current 504 accommodation plan.

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

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 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 #418
ON MAY 15, 2023

DATE OF REPORT JUNE 14, 2023

This report is in response to a complaint filed with our office on behalf of the student by his father. In the remainder of the report, the student will be referred to as "the student" and the father will be referred to as "the father" or "the parent." The mother is the student's stepmother and will be referred to as "the mother" in this report while both the mother and father will be referred to as "the parents."

The complaint is against USD #418 (McPherson Public Schools). In the remainder of the report, "USD #418," 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 and USD #418 received the complaint on May 15, 2023 and the timeline to investigate the allegations ended on June 14, 2023.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on May 16, 2023 as part of the investigative process.

The following school district staff responded to interview questions in writing via email during the investigation:

Alyssa Wistuba, General Education Teacher
Kaedy Page, High School Counselor
Lois Little-Winter, Audiologist
Linda Herring, Speech/Language Pathologist
Katherine Cooper, School Psychologist
Brandt Busse, Special Education Teacher

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. While all of these documents were used to provided background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Section 504 Student Accommodation Plan dated April 7, 2022
- Psychological Evaluation completed by James Vincent, Ph.D., Licensed Psychologist at the Therapy Center in Wichita, Kansas dated June 2, 2022
- Email dated July 19, 2022 at 4:34 p.m. written by the mother to Audrey Herbst, High School Principal
- Email dated July 20, 2022 at 8:18 a.m. by Dr. Herbst to the mother
- Prior Written Notice (PWN) for Evaluation or Reevaluation and Request for Consent dated August 2, 2022
- Electronic Signature Report showing both the mother and father provided electronic consent for the proposed evaluation on August 4, 2022
- Notice of Special Education Meeting dated September 23, 2023 scheduling an eligibility determination meeting for October 7, 2022
- Multidisciplinary Evaluation Planning Form completed at the October 7, 2022 eligibility determination meeting
- PWN for Identification, Special Education and Related Services, Educational Placement, Change of Services Change in Placement, and/or Request for Consent dated October 7, 2022
- Section 504 Student Accommodation Plan dated November 7, 2022
- PowerSchool attendance and grade report for the 2022-23 school year
- 2022-23 FastBridge Benchmark Reporting for math and reading
- 2022-23 school calendar for USD #418
- Response to the Allegations dated May 23, 2023 written by Melissa Strathman, Director of Special Education for USD #418

Background Information

This investigation involves a seventeen-year-old male student who was enrolled in the eleventh grade at McPherson High School in USD #418 during the 2022-23 school year. He previously received special education services due to a congenital hearing loss and speech/language delays but was dismissed from special education services during the 2015-16 school year when he was in fourth grade.

The student was evaluated in February 2017 by Teri Smith, Ph.D. at the Kansas University Hospital and diagnosed with Attention Deficit Hyperactivity Disorder (ADHD)

Combined Type and Disruptive Mood Dysregulation Disorder (DMDD). A previous diagnosis of Autism Spectrum Disorder was also documented at this time.

At the end of the tenth grade, USD #418 developed a Section 504 Student Accommodation Plan for the student to address his hearing loss and concentration issues. At that time, the following accommodations were put into place: 1) Seating in the front of the room; 2) Speak to his right ear . . . seat him on the left side of the room; 3) Organization techniques including use of a folder system; and 4) Motivational techniques including screen time reward at home for completing assignments.

The student was evaluated on June 2, 2022 by James Vaughn, Ph.D. at the Therapy Center and was diagnosed with Autism Spectrum Disorder with deficits in pragmatic language and without intellectual impairment.

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)). This investigation will only address concerns that occurred after May 15, 2022.

Based upon the written complaint, the parent raised one issue that was investigated.

> ISSUE ONE: The USD #418, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate procedures to conduct a special education evaluation of the student during the 2022-23 school year.

It is noted that the parent also made allegations that district staff are not following the Section 504 Student Accommodation Plan on a consistent basis. However, this allegation will not be investigated because it does not fall under the IDEA regulations and this investigator has no jurisdiction to investigate such complaints. The parent was provided contact information regarding filing a complaint with the Office for Civil Rights, which does have the authority and jurisdiction to investigate complaints related to Section 504 of the Rehabilitation Act.

Positions of the Parties

The parent stated that requests for a special education evaluation were initiated during the fall of the 2021-22 school year but these were denied multiple times. In April 2022, USD #418 acknowledged the student had a disability and developed a Section 504 Student Accommodation Plan to address concerns with his hearing loss and concentration.

During the summer of 2022, the parent obtained an outside evaluation at his own expense. At that time, the student was diagnosed with Autism Spectrum Disorder and the parent believed the student needed to receive special education services to address adaptive behavior, communication, and socialization skills. The parent shared the results of that evaluation with USD #418 on July 19, 20, 2022 and requested a special education evaluation at that time. The parent provided written consent for a special education evaluation on August 3, 2022.

On October 7, 2022, the parent shared that USD #418 determined that "his IQ was too high for them to implement an IEP." The parent stated,

> I would like the school to acknowledge he does have an intellectual disability and needs further assistance with special education classes due to his Adaptive skills being in the 1st percentile.

USD #418 acknowledged that the mother shared the results of the Therapy Center evaluation with district staff on July 20, 2022 and requested a special education evaluation at that time. The parent provided written consent for a special education evaluation on August 4, 2022 and the eligibility determination meeting was held on October 7, 2022. At that time, the multidisciplinary team determined the student did have a disability but was not in need of specialized instruction. USD #418 continues to address the student's disability-related needs through a Section 504 Student Accommodation Plan.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #418.

An email dated July 19, 2022 at 4:34 p.m. written by the mother to the high school principal documents that a copy of the Therapy Center Evaluation Report was provided to the LEA and that the parent was requesting a special education evaluation. The high

school principal replied on July 20, 2022 at 8:18 a.m. indicating that the special education evaluation would begin when staff returned from the summer break in August.

The school psychologist reported that she contacted the mother when she returned to work on August 2, 2022 to discuss the request for an evaluation. She stated:

> I spoke with the mother on the phone regarding the concerns. I also reviewed his current 504 and noticed the hearing concern. I then reached out to the McCSEC [McPherson County Special Education Cooperative] Audiologist & Teacher of the Deaf/HH [Hard of Hearing] to make them aware. An outside evaluation was also provided by the parent and used to support the school evaluation.

A PWN dated August 2, 2022 requesting consent for a special education evaluation was provided electronically to the parents on that same date. The PWN proposed additional assessment in the areas of social/emotional, general intelligence, and academic performance. All other areas reflected that current information and existing data were available and there was no need for any additional assessment in those areas. Records show the mother signed consent on August 3, 2022 at 11:40 a.m. and that the father signed consent on August 4, 2022 at 2:35 a.m.

The 2022-23 USD #418 Public Schools Calendar for the 2022-23 school year shows the first day school was August 16, 2022. Documentation shows the eligibility determination meeting was held on October 7, 2022, which is a total of 38 school days.

The Multidisciplinary Evaluation Planning Form created on October 7, 2022 reflects information collected during the review of existing data including parent report and results of the Therapy Center Evaluation Report completed on June 2, 2022 by Dr. Vaughn including the Childhood Autism Rating Scale, the Autism Spectrum Rating Scale for Parents, the Autism Diagnostic Observation Schedule, the Vineland Adaptive Behavior Scales, the Integrated Visual and Auditory Continuous Performance Test, and the Wechsler Intelligence Scale for Children (WISC-V). Results of assessments completed with written consent by the district included Adaptive Behavior Assessment System, the Behavior Assessment Scale for Children, the Kaufmann Tests of Educational Achievement, FastBridge screening data as well as classroom observations conducted on August 17, 2022 and September 26, 2022.

The report also included a summary of his current classroom performance showing he had two missing assignments in math, two assignments in English, and three assignments in science. His grades as of October 7, 2022 were as follows:

Art I: A (97%)
Spanish I: A+ (99%)
Geometry: C- (72%)
US History: A (96%)
Industrial Activities: A- (90%
English III: C+ (79%)
Environmental Science: B (83%)

The Multidisciplinary Evaluation Planning Form shows the multidisciplinary team considered the eligibility criteria for the following categories of exceptionality: Specific Learning Disability, Hearing Impairment, Autism, and Other Health Impaired. The report reflects discussion and decisions related both prongs of the eligibility determination: 1) whether a disability exits and 2) whether the student required special education instruction as a result of that disability.

Through the written interview questions, all six school employees of USD #418 who attended the October 7, 2022 eligibility determination meeting reported discussions regarding each category of exceptionality. While the student met Prong 1 of the Autism, Hearing Impairment, and Other Health Impairment categories due to his medical diagnoses, the team determined the student did not meet Prong 2 of the criteria because no specialized instruction was required for the student due to any of the disabilities.

The special education teacher stated:

> The student's lower scores in social skills, functional communication, and adaptive behavior do not affect his ability to be successful in the classroom. It was observed that despite having low scores in social skills Kayden was able to communicate with teachers and peers when needed to understand the material or complete assignments. Kayden has shown great progress in the general education classroom by maintaining a high-grade point average.

The school psychologist stated,

> At the time of the evaluation, the student was making adequate progress within the general education curriculum and setting. This was evidenced by teacher report, his current grades, and standardized assessment results as well as through district FastBridge benchmarking. Teacher BASC [Behavior Assessment Scale for Children] results indicated no concerns present in the school setting. Two observations indicated that the student was interacting appropriately with

> peers and adults. Observations indicated that the student was able to remain on task and complete assignments within the general education settings. Teachers reported that once the student was familiar with adults and peers he would open up and interact appropriately. He did keep to himself but when asked to participate in small groups or with peers, he would. He was reported to have friendships by teachers and in a student interview with the student.

The speech/language pathologist stated,

> Although his social language scores were below average, they were not impacting his performance in the general education curriculum. This was evidenced through the teacher reports that Kayden was having difficulty communicating and would be agitated when the mask mandate was in effect, but since masks are no longer required he is able to communicate with teachers and has had more positive interactions with his teachers. They feel that he relies on lip reading which was hindered during the mask mandate.

The report includes the following recommendations resulting from the evaluation:

1. Continuation of the 504 [student accommodation plan]
2. Due to medical diagnosis, the student could benefit from a hearing break throughout the day
3. Due to medical diagnosis, the student could benefit from shorter assignments where large amounts of auditory processing is needed
4. Due to social concerns, the student could benefit from targeted sessions with the school counselor
5. Due to attention concerns, the student could benefit from continuation of limited technology access at school
6. Accommodations should be made in all classrooms in regards to preferential seating, background noise minimized, good lighting, keywords and concepts emphasized good lighting, keywords and concepts emphasized, repeated and/or rephrased directions, and the use of closed captioning.

USD #418 provided the parent with PWN refusing to identify the student as a student with a disability in need of special education instruction on October 7, 2022.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.301(b) allow the parent of the child to make a referral for a special education evaluation. Federal regulations at 34 C.F.R. 300.502(c)(1) require school districts to consider the results of an independent education evaluation obtained by the parent and shared with the district.

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.

Federal regulations at 34 C.F.R. 300.305 (a)(1-2) require that an IEP team must conduct a review of existing evaluation data on 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. 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.

Federal regulations at 34 C.F.R. 300.321(a) require that an IEP team, at a minimum, must consist of the parent, an LEA representative, a general education teacher, a special education teacher, and a person who can interpret the instructional implications of evaluation results.

Following the review of existing data, federal regulations at 34 C.F.R. 300.503(a)(1) require school districts to provide parents with prior written notice a reasonable time before they propose to initiate an evaluation of a child who has or is suspected of having a disability under the IDEA.

Once written consent for the proposed initial evaluation is received by the school district, the agency has 60 school days to complete the evaluation and determine eligibility as required by state regulations at K.A.R. 91-040-8(f). Following the eligibility determination, the parent must once again be provided with prior written notice a reasonable time before the district refuses to change the identification of a child per federal regulations implementing the IDEA at 34 C.F.R. 300.503(a)(2).

In this case, documentation and interviews show the parents obtained an independent educational evaluation at the Therapy Center on June 2, 2022 at their own expense. This evaluation was shared with the district on July 19, 2022 and the mother made the initial request for a special education evaluation on that same date via email. The district initially responded to the request on July 20, 2022 explaining that staff would not be in the district until August due to the summer break.

On August 2, 2022, the school psychologist contacted the mother to discuss the outside evaluation and to obtain her input. The school psychologist provided the parents with an electronic version of a PWN on this same date proposing to conduct a special education evaluation and requesting consent based upon this conversation, a review of the outside evaluation, and records review. There is no documentation to support that the IEP team, which at a minimum must include the parent, LEA representative, general education teacher, special education teacher, and person to interpret the results of any assessments, ever met or conferred regarding the review of existing data prior to the parent being provided with the PWN created by the school psychologist proposing a special education evaluation and requesting consent.

Written consent for the evaluation was provided by the parents on August 3 and 4, 2022 and the eligibility determination meeting was held on October 7, 2022 which is well within 60 school days from the date of parental consent.

The IEP team determined that the student had multiple medical diagnoses that could identify him as having a disability under the IDEA; however, the student did not need specialized instruction as a result of any disability resulting from a medical diagnosis. The IEP team also determined the student did not meet the eligibility criteria for having a specific learning disability because his ability and achievement were commensurate as measured by standardized assessment.

It is noted that the parent specifically wanted the school to acknowledge that the student has an intellectual disability because of the significant delays in pragmatic language, adaptive behavior, and social skills. State regulations at K.A.R. 91-040-1(oo) define "intellectual disability" as follows:

> Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

Documentation shows the WISC-V score from the Therapy Center evaluation was used as existing data to obtain a standardized measure of the student's cognitive abilities.

Standard scores are based on a mean of 100 and a standard deviation of +/-15 which means that average scores would fall between 85 and 115. Summarized testing showed the student's full scale IQ score was 96 which falls within the average range and would not be considered "sub-average general intellectual functioning".

Based upon interviews, it is appears that the IEP team did briefly discuss this category of exceptionality as a possibility for the student because the parent stated, "his IQ was too high for them to implement an IEP". Documentation shows that because the student's IQ score of 96 did not fall within the sub-average range, this category could not be considered as an area of suspected disability under the Prong 1 criteria. While including this category in the Multidisciplinary Evaluation Planning Form would have made it clearer to the parents, the district was not required to consider and document every possible IDEA disability category during a special education evaluation in the evaluation report.

Interviews and documentation show the evaluation was comprehensive enough to address all areas of suspected disability in regards to both prong one and prong two of the eligibility criteria for Specific Learning Disability, Hearing Impairment, Other Health Impairment, and Autism. The information considered during the evaluation came from a variety of sources including the results of the independent educational evaluation paid for by the parent and shared with the district.

USD #418 provided the parents with a PWN refusing to identify the student as eligible for special education and related services under the IDEA. Parent consent is not needed for this action and there is no indication that the parent filed for due process within ten calendar days demonstrating disagreement with this proposed action.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to follow the appropriate procedure to conduct a review of existing evaluation data on the child as part of the special education evaluation process. Specifically, USD #418 failed to have the IEP team, which includes the parent, an LEA representative, a general education teacher, a special education teacher, and a person who can interpret the instructional implications of evaluation results, to determine what additional data, if any, were needed to determine whether the child is a child with a disability when only the school psychologist and parent conferred on August 2, 2022 to make this determination. However, it is noted that this procedural error did not negatively impact the district's ability to conduct a sufficiently comprehensive evaluation to identify all of the child's special education and related service needs as described in the Multidisciplinary Evaluation Planning Form.

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)(1-2) which require that an IEP team must conduct a review of existing evaluation data on the child in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability.

   In this case, USD #418 failed to have the IEP team, which includes the parent, an LEA representative, a general education teacher, a special education teacher, and a person who can interpret the instructional implications of evaluation results, to determine what additional data, if any, were needed to determine whether the child is a child with a disability when only the school psychologist and parent conferred on August 2, 2022 to make this determination.

Based on the foregoing identified violations, USD #418 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #418 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
   a) Comply with federal Federal regulations at 34 C.F.R. 300.305 (a)(1-2) which require that an IEP team must conduct a review of existing evaluation data on the child in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability.
2. No later than August 1, 2023, USD #418 shall review its procedures and practices related to including and documenting that the IEP team participated in the review of existing data to determine what additional assessments, if any, are needed to determine whether the child is a child with a disability and in need of special education and related services. USD #418 will update or create a written procedure / checklist for school psychologists to follow during the 2023-24 school year to ensure that appropriate procedures are followed and documented when conducting a review of existing data as part of a special education evaluation process. USD #418 will share this written procedure / checklist with the school psychologists within the district no later than August 1, 2023. USD #418 shall provide SETS with a copy of the written procedure / checklist and proof of dissemination no later than August 15, 2023.

3. No later than August 30, 2023, USD #418 shall conduct a training for school psychologists employed by the district for the 2023-24 school year regarding the IDEA initial evaluation process, specifically conducting the review of existing data by meeting or conferring with the IEP team, as well as the new written procedure / checklist. USD #418 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 #418 will provide SETS with any handouts and/or a copy of the presentation.
4. It is noted that no individual corrective action is ordered at this time as the documentation and interviews found USD #418 did conduct an evaluation of the student which was sufficiently comprehensive to identify all areas of suspected disability and the need for special education and related services on October 7, 2022.
5. Further, USD #418 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:
    b) a statement verifying acceptance of the corrective action or actions specified in this report;
    c) 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
    d) 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. 91-40-51(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 #313
ON MARCH 6, 2023

DATE OF REPORT APRIL 5, 2023

This report is in response to a complaint filed with our office on behalf of the student by the mother. In the remainder of the report, the student will be referred to as "the student." The mother is the student's mother and in the remainder of this report will be referred to as "the mother" or "the parent.

The complaint is against USD #313 (Buhler Public Schools) who provides special education and related services to students in their district through the Reno County Education Cooperative Interlocal 610. In the remainder of the report, "school" "coop" or the "district" shall refer to the 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 March 6, 2023 and the 30-day timeline ends on April 5, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator initially interviewed the mother by telephone on March 6 and March 27, 2023. Additionally, the Complaint Investigator exchanged emails, texts, and phone calls with the mother between March 6 - March 28, 2023.

USD #313 made the following school staff available for a conference call interview with the Complaint Investigators on March 23, 2023: Zachary Lawrence, Assistant Director, Reno County Education Cooperative, Mr. Amanda Feldhus, Adaptive Teacher, Mr. Beau Behymer, Weights teacher, Mr. John Smeeton, School Psychologist, Mr. Randall Rank, Assistant Principal, Ms. Abby Thompson, Principal, Ms. Shayla DeGarmo, Speech and Language Pathologist. The investigators further spoke to Ms. Christine Block, special education teacher on March 27, 2023, Cory Elliott, paraeducator on March 27, 2023 and

Dr. Cindy Couchman, Superintendent, USD 313 and Ms. Lena Kisner, Executive Director, Reno County Education Cooperative on March 27, 2023.

The Complaint Investigator also exchanged emails with Ms. Kisner between March 7 through March 31, 2023 to gather additional information and to clarify documentation provided by the district.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. The following materials submitted were carefully read and used in consideration of the issue. They include:

IEP Amendment and Meeting Notes dated May 18, 2022
Prior Written Notice for Change in Services/Placement and Request for Consent (PWN) dated May 18, 2022 , consent signed May 18, 2022
Progress Report for dates, January 13, 2022 through January 9, 2023
Email from Ms. Amanda Feldhus, case manager to parent dated October 18, 2022 at 10:30 a.m.
Email from Mr. Bowe Behymer, weights teacher to parent dated October 23, 2022 at 8:24 p.m.
Email from Mr. Victor Wilkinson Science Teacher to parent dated October 24, 2022 at 6:56 a.m.
IEP Amendment and Meeting Notes dated October 27, 2022
Prior Written Notice for Change in Services/Placement and Request for Consent (PWN) dated October 27, 2022
Individualized Education Plan (IEP) and Meeting Notes dated January 10, 2023
Prior Written Notice for Change in Services/Placement and Request for Consent (PWN) dated January 10, 2023, consent provided January 10, 2023
Progress Report for dates, January 10, 2023 through January 9, 2024 completed through Quarter three
Email from Ms. Lena Kisner, Executive Director, Reno County Education Cooperative to complaint investigator dated March 30, 2023 at 8:43 a.m.
Email from Ms. Kisner to complaint investigator dated March 30, 2023 at 11:17 a.m.
Email from Ms. Kisner to complaint investigator dated March 30, 2023 at 11:27 a.m.
Email from Ms. Christine Block, teacher to Ms. Kisner dated March 30, 2023 at 1:16 p.m.
Email from Ms. Kisner to complaint investigator dated March 30, 2023 at 1:21 p.m.
Grades and Attendance for the student for the 2022-2023 school year, Quick Lookup View
Occupational Therapy Service Logs for 2022-2023 school year

Speech Language Therapy Service Logs for 2022-2023 school year
iReady Reading & Math Supplemental Lessons
Image of Visual Cue Cards
Daily Behavior Tally sheet with 15-minute increments
Special Education Teacher para schedule 22.23

Background Information

This investigation involves a 13-year-old student who is currently enrolled as a 7th grader. He receives special education services both in-class and pull-out along with social work direct and consultative services. The student receives specialized instruction in the resource room for ELA, math, reading, and social studies with para support for science, weights, PE, and Champion Time. He receives 20 minutes of direct speech and language services two times every week and 10 minutes of indirect services once every four weeks. He qualifies for special education and related services under the exceptionality category of intellectual disabilities and secondary, speech and language. He has delays in articulation, expressive and receptive language, and characteristics of speech apraxia. He participates in the alternate assessment and his reading and math skills are evaluated to be approximately kindergarten to first grade level. He uses assistive technology to assist him in repairing communication breakdowns and has a Behavior Intervention and Assistive Technology Plan.

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. This issue involved both delivery of services, including the behavior intervention plan and implementation of the IEP goals. Both concerns will be addressed in this one issue.

ISSUE ONE: The USD #313, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the IEP, including the BIP thereby denying FAPE for the student. Specifically, not all of the services in the student's IEP were provided and adequate support was not provided for the student to make progress during the 2022-2023 school year.

Positions of the Parties

The mother alleged that her student has made little or no progress with his IEP goals in speech, math and reading this school year. She stated there were not enough paraeducators in the classroom to provide individual help with the student's classwork or IEP goals. Further, although the behavior intervention plan is appropriate for the student his behavior is getting worse because it was not implemented. Finally, there was no documentation of his attendance at classes on his schedule and IEP prior to the Christmas break. She stated that the teachers and paras were pulled from their roles of assisting in the classroom because one student with behavior issues constantly needed extra help.

USD #313 stated that the parent declined to talk with the district about the complaint to provide specific information and as a result, a resolution could not be proposed. They responded that the IEP team met multiple times with the parent during the 2022-2023 school year as well as the preceding school year and during parent teacher conferences. During each of these meetings progress, staffing and attendance were discussed. The annual IEP written on January 13, 2022 was amended three times to address the student's education and staff training. The current annual IEP was written as recently as January 10, 2023 and each of these topics were addressed during that meeting.

The district acknowledged the parent presented concerns on October 27, 2022 regarding the student not attending his weights class when the para was absent. The school acknowledged that the student was not being marked absent from weights on these days and was given alternative activities in the special education classroom. After the team discussed this concern on October 27, 2022, the team came to a consensus that the student would attend weights class even if the para was absent. This plan began immediately, and the student has been going to weights class. As far as the school was concerned, this issue was resolved.

The student received specialized instruction in the resource room for ELA, math, reading, and social studies with para support for science, weights, PE, and Champion Time. In the resource room the student may do 1:1 instruction, small group, whole group or independent work. The resource room is staffed with a teacher and paras depending on the number of students and type of student groupings for instruction. The student made progress on his IEP goals written in January 2023 as evidenced by his progress reports. The school acknowledged that the student continues to struggle with his behavior throughout the day and they continue to try various strategies through his behavior plan to address these concerns.

The student's IEP team has willingly met with the family and has repeatedly attempted to address reported concerns. The IEP team has been transparent regarding the student's behavior and efforts to address his behavioral needs. The district acknowledged that the student's behavior makes learning difficult for him and has had consistent access to the general education curriculum, other than the issue in weights which was already resolved, and consistently receives his special education and related services.

Findings of the Investigation

The investigation focused on two aspects of the implementation of the IEPs in place during the 2022-2023 school year. First, were the services written into the 2022-2023 IEPs delivered and second, were the goals of the IEP implemented and reports of progress provided. The following findings are based upon a review of documentation and interviews with the parent and the district.

Delivery of service minutes and accommodations written into the IEP

Three IEPs were in effect during the 2022-2023 school year. The table below presents the services and accommodations for each. The final column shows the evidence that was used to examine if the services were delivered and accommodations used.

SERVICES

Services	May 15, 2022	October 27, 2022	January 10, 2023	Evidence examined for Implementation
Service minutes - Specialized instruction in regular ed classroom	176 minutes, 5 days every week	176 minutes, 5 days every week	141 minutes, 5 days every week	Attendance records, staff interview, emails about attendance, para schedule, meeting minutes and emails to discuss student attendance if para absence
Specialized instruction outside regular ed classroom	188 minutes, 5 days every week (includes Champ)	188 minutes, 5 days every week (includes Champ)	188 minutes, 5 days every week	Attendance records, staff interview, progress reports, para schedule, emails discussing behavior
Service minutes - Specialized instruction in regular ed classroom - Champion time	See above	See above	25 minutes, 5 days every week	Emails about tardies to Champion time IEP minutes to add staff to delay interruptions
Speech/Language direct outside regular ed classroom	20 minutes, 3 days every week	20 minutes, 3 days every week	20 minutes, 2 days every week	Speech log, progress reports, schedule
Indirect special education services for assistive technology consistent use	30 minutes, 1 day every 4 weeks	30 minutes, 1 day every 4 weeks	10 minutes 1 time every 4 weeks	Speech log
Indirect Occupational Therapy	5 minutes, 1 time every 9 weeks	5 minutes, 1 time every 9 weeks	Discontinued	OT Logs
Attendant care extracurricular waiting for bus	Not included	40 minutes 5 days every week	Discontinued	Emails, para schedule

The student's schedule, para schedules, attendance showed he was scheduled to regularly attend general education and specialized classes. The staff and parent agreed he attended those classes. Emails show that the general education staff communicated with the parent about assignments and attendance. The district acknowledged there were times prior to the October 27, 2022 IEP the student did not attend his weights class when his assigned para was absent and was provided with alternate instruction in his special education classroom. This was further complicated because the general educators were not systematically marking absences. IEP amendments and emails showed that when the problem was discovered the team worked out a solution to ensure he was able to meet his service minutes and no additional absences occurred.

Speech and Occupational service logs show the student received these services on the whole. Student and staff absences were recorded. No records showed that the student's minutes were made up when the staff was absent.

ACCOMMODATIONS

Accommodations	May 15, 2022	October 27, 2022	January 10, 2022	Evidence examined for Implementation
Adult supervision/support throughout daily transitions	included	included	included	Para schedule, staff interview, emails
Materials read to student	Not included	included	included	staff interview
Transportation	included	included	included	Not actively investigated, but emails show he received the transportation
Visual cue cards to aid in transitioning	included	included	included	Staff interview, visual cue cards
Visual timer for transitioning	Not included	Not included	included	Staff interview
ACC Device	included	included	Not included	Staff interview, parent interview, progress reports
Scribe for materials	included	included	Not included	Staff reports

Each of the three IEPs included the accommodation of Adult supervision to participate in transitions, mealtimes, general education courses, arrival, and dismissal. Staff schedules showed those times with assigned paras. The staff described their roles during each of these times. The student's classroom schedule and interview showed that the student had a para or teacher assigned to him or supervising him for the entire school day. The special education teacher and staff reported that staff alternate taking lunch so that two persons were always available. The October 27, 2022 IEP meeting notes show that para coverage was discussed and clarified.

The district reported that the student's classroom had a teacher and 3 paras for the 11 students on her caseload and the other special education class where the student attended adaptive PE and sign language had a teacher and two assigned paras for four students. An additional para was available to these two classes at some times of the day.

Staff interviews verified that the scribing and read aloud were used with the student. The visual transition cards and strategies were examined and staff described how they were used.

Emails and interviews showed agreement that the iPad was used as the ACC device. Concerns were identified by the parent that the student was using the iPad for other purposes, instruction and free time and had asked that he only use it for communication. Staff reported that this was shared with all staff working with the student.

Emails and IEP meeting notes showed that the student was receiving transportation and actively problem solved meeting the student when he disembarked to reduce tardies.

Implementation of the Behavior Interventions and Behavior Intervention Plan (BIP)

1. The IEP amended on May 18, 2022 that was in effect at the start of the 2022-2023 school year indicated that the student's behavior of eloping from the classroom, hiding and refusing to complete assigned tasks impeded his or other's learning and a BIP was not needed. It was written that the behavior was addressed through goals and/or accommodations. A goal was written to use a communication system. Staff training on using the communication system was included in the amended IEP and accommodations for staff supervision were included as well. This May 18, 2022 amended IEP further included a section titled, FBA/BIP including a description of problem behaviors, scatterplot and ABC data descriptions, behavior functions, a replacement behavior of using a communication system, antecedent strategies, reinforcements, and reactive strategies.
2. Staff reported training with the paras prior to the start of the 2022-2023 school year included both how to use the student's BIP and the assistive technology for communication. Staff interviewed could describe the student's behavior and components of the intervention procedures. Additionally, it was reported that the student's IEP was stored in the teacher's classroom and available to paras. Emails verified that the general education teachers had received copies of the student's IEP, including the BIP and AT plan.
3. The para schedule for the 2022-2023 school year showed that paras were assigned to the student.
4. An email exchange between the special education teacher and parent described ongoing and worsening behaviors during the fall semester and reported she was working with the school psychologist and asked the parent for any ideas as well.
5. The student's IEP was amended on October 27, 2022 and indicated that the student's behavior impeded his or other's learning and a BIP was needed. A goal for using a communication system and staff training remained in the IEP. The BIP included in the October 27, 2022 IEP amendment described the behavior as

"struggling with following a direction in a timely manner, without engaging in other off task behaviors, these include, but are not limited to: touching things/people, wandering around the room, bossing others about the direction, telling off the staff members who give the directions, engaging in imaginative play. The BIP further included sections for scatterplot and ABC data descriptions, behavior functions, replacement behaviors, antecedent strategies, reinforcements, reactive strategies and a crisis plan.

6. The parent shared a behavior chart containing 3 strikes for behavior and a number of reward choices at the October 27, 2022 IEP amendment meeting consistent with the BIP. No data from this chart were found.
7. The teacher reported that a behavior chart was used following the October 27, 2022 IEP meeting to track the success of the BIP interventions. She reported that the data showed providing additional prompts were not a helpful intervention as it prolonged his response time. Using the data she moved to visual cue cards, paired with a verbal prompt as to what's next on his schedule. This is included in his IEP.
8. The teacher reported that anytime a change was made to the IEP, inclusive of the BIP, a new paper copy was printed out, highlighting any changes and handed to all staff involved with the student. Several teachers verified they received the IEP during the 2022-2023 school year.
9. The quarter 1 and 2 student progress reports did not include data about the implementation of the BIP, however did include data about the communication system.
10. The teacher reported that she shared information about the student's behavior with the parent via text or email, but not data. The mother verified this, but she said it was primarily describing what was not working and led her to conclude that his behaviors were getting worse.
11. The BIP included in the January 10, 2023 IEP included further additions to the antecedent strategies, reinforcements and reactive plan.
12. The parent offered for the student to FaceTime her if he was not following directions but had not been contacted. The BIP listed "Contact parents if behavior tracking shows over 50% of a (sic) day with negative behaviors." in the Crisis Plan.
13. The parent reported that the student's targeted behavior continued to get worse and he has begun to mimic the problem behavior of another student. The district acknowledged that the student's behavior has been challenging and continues to refine the plan.

Implementation of IEP goals and student progress on goals

The student had four goals for his May 18, 2022 amended IEP, October 27, 2022 amended IEP and three goals for his annual January 10, 2023 IEP.

5/18/22 IEP goal Progress reported 10/14/22	10/27/22 IEP goal Progress reported 12/21/22	1/10/23 IEP goal Progress reported 3/3/23
1.Demonstrate proficiency, with 60% accuracy when assessed on the following math skills: 60% - Identifying coin values – dime, penny, quarter, nickel 100% - Determining value of multiples of same coin (5 pennies = 5 cents) 0% - Determining value of mixed coins to $1.00 80% - Addition to 20 with no regrouping	1.Demonstrate proficiency, with 80% accuracy when assessed on the following math skills: Not implemented as a different curriculum was introduced and money skills were not introduced during Quarter 2.	1.When given 2-digit plus 1-digit addition problems, student will be able to independently solve the equations with 20% accuracy Baseline - needs step-by-step reminders Student solved given equations, independently at 70% accuracy as reported on 3/3/23
2.Demonstrate knowledge of 50 community access signs/symbols equations with 60% proficiency 52% - Student can accurately name 26/50 community access symbols	2.Demonstrate knowledge of 50 community access signs/symbols equations with 80% proficiency No report of progress	2.Learn 13 additional sight words around the community (e.g., grocery, fast food) Baseline – mastered 50 sight words in this program Student mastered 14 new community sight words
3.Given a 2-3 sequence picture scene (e.g., first then pictures, simple stories, etc.) student will use 2 or more appropriate words for each picture scene to describe what has occurred throughout the entire picture scene sequence with 100% accuracy across 1/3 consecutive speech therapy sessions. 50% independent - finds vocabulary words (primarily animal and food) When provided with 1-2 words with some cues with 100% accuracy when prompted to describe a picture	3.Given a 2-3 sequence picture scene (e.g., first then pictures, simple stories, etc.) student will use 2 or more appropriate words for each picture scene to describe what has occurred throughout the entire picture scene sequence with 100% accuracy across 2/3 consecutive speech therapy sessions. Met goal Display reduced to 5x5 for easier navigation. Can describe a picture scene with 1-2 words verbally but does not prefer to use device. Using sign more.	Goal met and discontinued.
4.Spontaneously request desired objects/actions using prestored messaged or use prestored messages to express emotions at least 1 time throughout his daily routine over 1/3 consecutive daily routines. No progress reported.	4.Spontaneously request desired objects/actions using prestored messaged or use prestored messages to express emotions at least 3 times throughout his daily routine over 2/3 consecutive daily routines. Not addressed this reporting period. It was recorded that the "goal has been discontinued"	Discontinued and replaced with communication breakdowns

5/18/22 IEP goal Progress reported 10/14/22	10/27/22 IEP goal Progress reported 12/21/22	1/10/23 IEP goal Progress reported 3/3/23
		5.Identify communication breakdowns and independently use compensatory strategies (e.g., restate what he said, slow rate, gestures, sign, AAC device, etc.) to repair communication breakdowns in 2 of 4 observed opportunities. Baseline – uses sign to repair breakdown, not always aware when breakdown takes place Student is recognizing and attempting to repair about 2/4 breakdowns with moderate to max. cues. He primarily attempts to repair those breakdowns with gestures and sign language during a structured activity. However, classroom teacher reported on instance when student independently repaired a breakdown with ACC device.

1. The Staff reported that the student's special education teacher was responsible to collect progress monitoring on the money and survival sign IEP goals (row 1 and 2). The progress notes show the speech and language therapist collected and reported progress on the communication goal (row 3).
2. No progress was reported or data available for review on his Behavior Intervention Plan.
3. The iReady Reading and mathematic supplemental lessons indicated practice at the early, mid, and late K levels. The staff explained that he worked on these when he had extra time and was not his primary instruction.
4. The Prior Written Notice dated October 27, 2023 documented, "All other services are remaining the same with no changes in placement."
5. The Meeting notes for the January 10, 2023 IEP recorded the parents desire to increase student expectations in general education classes, to engage general education teachers to modify existing classroom materials rather than use alternate materials and discuss grading expectations that appraise his knowledge of the content.
6. The parent reported observing her child being designated to a "safe space" and given noise-canceling headphones when another student in the class had a

behavior outburst. The teacher acknowledged the situation and explained that having a person observing in the classroom was a known trigger for the student. She reported that the student having the outburst was known to engage in loud screaming from time to time and students were routinely offered headphones to drown out that noise while continuing to work. The headphones did not completely block out noise and students were able to hear people talking to them.

The parent further stated that her child and another student were left unsupervised in the classroom when the student having the outburst was removed from the classroom. The district responded that the classroom where the outburst occurred is a large classroom split in half with each half having an external door to the hallway and a door that connects the two half-rooms. One half-room was set up as a typical classroom space. The second half-room was set up as a calming space or space for small group work. The student having the outburst was moved from the group to the half-room used as a calming space. The teacher stated adults were in the classroom at all times, but may have been in the calming space half while moving the student. The teacher stated her practice when any student is in the calming half-room is to leave the door open to allow staff to move readily between the two half-rooms as needed for the student and ongoing instruction. Finally, the principal and assistant principal reported the schools' practice was that when a student's behavior does not deescalate as expected they were called to take the student to the office to calm.

Applicable Regulations and Conclusions

Federal law at 34 C.F.R. 300.17(d) and K.A.R. 91-40-19(a) stipulates that Free appropriate public education (FAPE) means that special education and related services are provided in conformity with an individualized education program (IEP). The United States Supreme Court further refined the legal standard for FAPE in Endrew F. v. Douglas County School District, 117 LRP 9767 (S.C. 2017) to ensure the procedural requirements of IDEA be met and that the IEP is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Further, Federal law at 34 C.F.R. 300.320(a)(3) K.S.A. 72-3429(c)(3) states that progress toward the IEP 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. It is permissible that this reporting 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. In this case the following is found:

1. There were instances in the fall semester when the student did not attend his weights class due to regular para absences and arrived late to his first class of the day. They were acknowledged by the district. It was not possible to verify the exact times nor the number of times. It is noted that upon discovering these missed times the district responded by reallocating staff and creatively problem solving to ensure the student did not miss his service minutes in his general education classrooms. They further documented these decisions in IEP amendments, Prior Written Notices, and meeting notes.
2. The district has adequate staff and procedures in place to implement the student's BIP, IEP goals and accommodations. They demonstrated they trained staff, shared the most current BIP and IEP with IEP team members and have procedures in place to ensure communication to implement the IEP.
3. The staff is responsive to the student's behavior and show efforts to continue to refine the BIP, behavior procedures and accommodations to address the student's behavior. They demonstrated they have involved additional district resources. Systematic data collection on the problem behavior was not available that assists in teasing out behavior patterns for additional behavior intervention refinements.
4. The district responded to a behavioral outburst of a student consistent with practices they have in place to address behavioral outbursts.
5. Progress monitoring was not systematically or consistently provided to the parent. It was agreed that the parent received progress via emails or texts on occasion. The quarterly progress reporting was not complete and misreported that one goal was discontinued on the Quarter 2 progress report, but no PWNs nor amendments supported that. The January 10, 2023 math goal proposed baseline without data and provided 20% accuracy on this goal for the first quarter of implementation. The student was reported as achieving 70% accuracy. The complaint was filed shortly after progress reporting, but it would be expected that a PWN would be written to raise the expectation since the annual goal proposed 80% accuracy in a year's time of instruction. Further, the progress report did not include a report of progress for the 2022-2023 Quarter ending December 12, 2022.
6. It is found that during the 2022-2023 school year the student progress was generally reported as met or on track to meet the goal for the year for the quarterly objectives/benchmarks proposed in the IEP when progress was reported. The math goal on the January 10, 2023 IEP does not include baseline and the first quarter reporting shows achievement at a higher level than was expected within a year of instruction. Further, the meeting notes recorded in the January 10, 2023 IEP that expectations for the student in general education needed to be raised.

Based on the foregoing, it is substantiated that USD #313 failed to implement the IEP thereby denying FAPE for the student.

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 regulations at 34 C.F.R. 300.17(d) and K.A.R. 91-40-19(a) specifies that that special education and related services are provided in conformity with an individualized education program (IEP).

In this case, the evidence supports the finding that USD #313 did not implement all of the IEP goals contained in the October 27, 2022 IEP. IEPs, progress reports, PWNs and Interview document this. It is noted that this does not appear to be a district problem and specific-focused refresher training is appropriate.

B. Federal law at 34 C.F.R. 300.320(a)(3) K.S.A. 72-3429(c)(3) specifies that progress toward the IEP 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, typically in accordance with distribution of grade cards.

In this case, the evidence supports the finding that USD #313 did not provide parents with progress reports including a description of the child's progress for all of the student's goals during two quarters. Progress reports, IEPs, and Interview document this. It is noted that this does not appear to be a district problem.

Based on the foregoing, USD #313 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #313 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.17(d) and K.A.R. 91-40-19(a) by implementing the IEP through delivering instruction and monitoring progress on all goals.
2. Within 15 calendar days of the date of this report, USD #313 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.320(a)(3) K.S.A. 72-3429(c)(3) by providing parents with a report of progress toward the IEP goals that includes a description of the child's progress towards the child's measurable annual goals on a regular basis.

3. By May 15, 2023 the special educators working with the student will demonstrate how they will complete technical assistance with TASN or comparable agency to writing SMART IEP goals, designing data collection that includes baseline, using data collection to make data based decisions for behavior, and reporting progress to parents. Evidence of this training will be submitted to the Special Education and Title Services (SETS) prior to the start of the 2023-2024 school year.

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 of 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

Gwen Beegle, 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 MAY 12, 2023

DATE OF REPORT JUNE 19, 2023

This report is in response to a complaint filed with our office on behalf of the student by the parent, who along with her husband, the father and the mother, the mother, serve as the student's family. In the remainder of the report, the student will be referred to as "the student." The parent is the student stepmother and in the remainder of this report will be referred to as "the complainant" or "the stepparent." The parent is the student father and in the remainder of this report will be referred to as "the father" and the mother is the student mother in the remainder of this report will be referred to as "the mother." When referring to the student mother, father, and stepparent in this report they will be referred to as "the family."

The complaint is against USD #259 (Wichita Public Schools) who provides general and special education to students in their district and are the responsible agency. In the remainder of the report, "school" or the "district" may be named, but in all cases shall refer to the 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 May 12, 2023 and the 30-day timeline ends on June 12, 2023. Subsequently a week extension requested by the complaint investigator was granted and the new timeline ended June 19, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator initially interviewed the parent by telephone on May 15, 2023. Additionally, the Complaint Investigator exchanged emails, texts, and phone calls and messages with the mother between May 13, 2023 – June 5, 2023.

The Complaint Investigator exchanged emails with Dr. Shores between May 13, 2023 through June 1, 2023 to gather additional information and to clarify documentation provided by the district.

This investigation addressed three issues. Two additional issues were identified but were not investigated because they did not fall under the IDEA regulations. The following materials submitted by the family and district were carefully read and used in consideration of the issue. They include:

Individualized Education Program dated May 18, 2022

2022-2023 Special Education Student Contact Log with dates beginning August 16, 2022 through May 10, 2023

2022-2023 General Education Student Contact Log with dates beginning October 3, 2022 through May 17, 2023

2022-2023 Quarters 1-3 Report Cards

Email from Mr. Mark Sanders, Special Education Teacher, Brooks Magnet Middle School to family dated November 17, 2022 at 4:06 p.m.

IEP & 504 Team Meeting Notes dated November 21, 2022

Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated November 21, 2022

Student Progress Report dated December 16, 2022

Email from Mr. Erich Stephen, Data Leader, Brooks Magnet Middle School to Mr. Sanders dated January 31, 2023 at 12:50 p.m.

Email exchange between Mr. Stephen, Mr. Sanders and stepparent dated February 1, 2023 between 10:03 a.m. and 3:31 p.m.

IEP Amendment Between IEP Meetings dated February 3, 2023

Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 3, 2023

Email exchange between Mr. Sanders and Ms. Megan Story, school counselor, Brooks Magnet Middle School dated February 3, 2023 at 4:23 p.m. and February 7, 2023 at 10:43 a.m.

Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 7, 2023

Email exchange between Ms. Story and family dated between February 21, 2023 at 2:14 p.m. and February 23, 2023 at 8:45 a.m.

Email exchange among stepparent, Ms. Becky Douglas, Social Worker at Partial Day Program, ascension, and Ms. Story dated February 24, 2023 between 12:31 p.m. – 1:51 p.m.

Individualized Education Program and IEP Meeting Notes dated February 28, 2023

Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated February 28, 2023

Email exchange between stepparent and Mr. Sanders and Ms. Story dated between March 1, 2023 at 1:11 p.m. and 1:50 p.m.

Email from Mr. Sanders to IEP team dated March 3, 2023 at 1:19 p.m.

Student Progress Report dated March 6, 2023

IEP & 504 Team Meeting Notes dated March 22, 2023

Email from Ms. Abigail Dedeaux, Social Worker, Brooks Magnet Middle School to family dated March 23, 2023 at 8:29 a.m.

Email from Ms. Amy Godsey, Mediation/Due Process Supervisor to Mr. Walter Givens, Jr. Principal, Brooks Magnet Middle School; Dr. Erica Shores, Mediation and Due Process Supervisor; Ms. Holly Yager, Program Specialist / Psychological Services; Ms. Hilary Trudo, Social Work Services Program Specialist; Ms. Rebecca Werner, Director of Related Services, Audiology, HI, VI, OT, PT, Speech; Ms. Dedeaux; and Ms. Carina Riley, Special Education Campus Support dated March 29, 2023 at 2:27 p.m.

Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated March 30, 2023 in response to March 1, 2023 request.

Email exchange between parent and Ms. Abby Dedeaux dated March 27, 2023 at 7:52 a.m. and 8:29 a.m.

Prior Written Notice for Evaluation or Reevaluation and Request for Consent dated March 30, 2023 in response to March 28, 2023 request with April 6, 2023 parent consent signed.

Email exchange between parent and Ms. Dedeaux dated March 30, 2023 at 10:54 a.m. and 11:54 a.m.

Email exchange between Ms. Dedeaux and family dated between March 30, 2023 at 3:16 and March 31, 2023 at 9:58 a.m.

Email exchange between family and Ms. Dedeaux dated April 4, 2023 at 2:55 p.m. through April 5, 2023 at 12:20 p.m.

Individualized Education Program dated April 11, 2023

Parent Consent for Receipt of Special Education Documents by Electronic Mail dated April 11, 2023

Email between Mr. Mark Smith, Technology, Brooks Magnet Middle School, and family dated April 12, 2023 between 1:42 and 6:25 p.m.

Email from stepparent to Mr. Sanders dated April 12, 2023 at 6:44 p.m.

Email between family, Mr. Sanders, and Ms. Jerusha Willenborg, Assistant Principal, Brooks Magnet Middle School dated April 12, 2023 at 6:25 p.m. and April 20, 2023 at 11:24 a.m.

Email between Ms. Story to Ms. Meriellen Gipson, Application Support Technician, Wichita Public Schools dated April 19, 2023 between 9:38 a.m. and 12:21 p.m.

Email exchange between family and Ms. Dedeaux dated April 20, 2023 at 7:24 a.m. through April 21, 2023 at 11:16 a.m.

Email between stepparent and Ms. Story dated April 20, 2023 at 11:23 a.m. and April 21, 2023 at 3:17 p.m.

Email between stepparent and Ms. Story dated April 27, 2023 between 12:38 p.m. and 1:56 p.m.

Email from Mr. Riley to family dated April 28, 2023 at 8:49 a.m.

IEP Team Meeting Agenda dated May 3, 2023

IEP & 504 Team Meeting Notes dated May 3, 2023

Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated May 8, 2023

IEP & 504 Team Meeting Notes dated May 8, 2023

Email from Ms. Riley to stepparent dated May 9, 2023 at 2:08 p.m.

Individualized Education Program undated but saved with May 18, 2023 date

Email exchange between parent and Ms. Dedeaux dated May 18, 2023 between 1:46 p.m. and 2:49 p.m.

Email from Mr. Sanders, to family dated May 22, 2023 at 1:37 p.m.

USD 259 Response to 23FC259-012 dated May 24, 2023

Background Information

This investigation involves a 13-year-old eighth grade student at a middle school in the district. He met the eligibility criteria as a student with autism and has additional s diagnoses of Attention-Deficit/Hyperactivity Disorder (ADHD-combined type), Obsessive

Compulsive Disorder (OCD), and other specified depressive disorder. The student has delays in his emotional response, adaptation to change, and fear or nervousness. He may show signs of anxiety or have outbursts in class. Due to his OCD, he experiences intrusive thoughts which may affect his behavior and emotional state.

The student has a transition plan and members of his IEP team are conducting an FBA. His April 11, 2023 IEP lists four goals in study skills, reading, writing and behavior. For all core classes, he receives services in the class within the class (CWC) setting with non-exceptional peers. Additionally, he receives counseling and speech 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 for the 2022-2023 school year.

> ISSUE ONE: The USD #259, 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 functional behavioral assessment.

Positions of the Parties

The complainant alleged that they requested an FBA assessment in writing in an email and the request was ignored for an extensive amount of time. The approval was only given when an email asking for approval or denial in writing was requested. They stated this took weeks for a response.

USD #259 responded that the family sent an email on March 1, 2023 requesting an FBA for the student. At a March 22, 2023 IEP meeting following spring break the team discussed the FBA and agreed to not conduct an FBA at this time. Before the school had provided a refusal to conduct the FBA following the March 22, 2023 team decision the family reconsidered and again requested the FBA. The IEP team agreed to move forward with an FBA and provided the proper PWN and request for consent.

Findings of the Investigation

The district SPED Student Contact Log and emails documented and district and family confirmed that the family requested an FBA on March 1, 2023 and the school counselor responded that the school social worker will contact the family about the IEP meeting and to discuss the FBA and re-evaluation, "… The FBA and a re-eval do take some time and cannot be completed with just an IEP meeting. At the IEP meeting we can discuss your concerns and requests; how we can support [the student] during the re-eval period, and any other needs."

The Meeting Notes from the March 22, 2023 IEP Team meeting documented that the IEP team discussed the parent's March 1, 2023 request for an FBA for behavioral concerns as follows, 1. "Parent requested FBA for behavioral concerns." 2. "Parents note that [student] has made progress socially/emotionally since hospitalization and using coping skills to decrease potential for escalation behaviorally." 3. "Parents report that he engages in attention-seeking behaviors to gain positive or negative attention as well as control over his environment." 4. "[Student] refuses to use behavioral tracking sheet. Staff will transition to electronic behavioral tracking form filled out by teachers to gather data."

The Meeting Notes from the March 22, 2023 IEP Team meeting documented that the IEP team determined the next steps as: "Currently, there is not sufficient data to support moving forward with an FBA at this time. Over the next 3 weeks of trial period, an Individual Problem Solving Process will be initiated. Staff will collect electronic data and present it to parents at the April 11th meeting to review [student's] progress within new interventions/accommodations. Parents report they want to wait to sign paperwork for new IEP updates until the April 11th meeting."

Documentation from the district showed that the parents contacted the district on March 28, 2023 "to state they do in fact want the FBA. Given the circumstances, Mr. Givens has stated that the team will move forward with the FBA."

The district reported the March 28, 2023 request for the FBA occurred before the school had provided the family with refusal to conduct the FBA they initially requested on March 1, 2023.

The district provided the family with a PWN dated March 30, 2023 that rejected the parent March 1, 2023 request for conducting a reevaluation/FBA providing a reason that the data did not warrant this action.

Documentation from district dated March 30, 2023 showed the parent questioned if the March 30, 2023 PWN rejecting the March 1, 2023 request for an FBA was the final decision from the district about conducting an FBA, stating, "Is this attachment the official rejection letter to my FBA request? I feel if this FBA request is not performed, we will need to seek outside support to help [student] access the same resources his peers are able to."

Documentation showed that the school social worker sent an email to the family on March 30, 2023 at 3:14 p.m. stating, "Attached is a copy of the Prior Written Notice documenting your parent request for FBA as well as a copy of your parents' rights. There will be signature requests waiting for you in ParentVue to sign, consenting to the FBA." The district reported this PWN was in response to the March 28, 2023 parent request for an FBA.

Documentation provided by the district showed the parent contacted the district stating that the PWN and consent could not be accessed via ParentVue between March 31, 2023 and April 5, 2023. The district reported it emailed the PWN and consent signature page to the family on March 30, 2023.

Documentation showed that the stepparent signed consent for conducting the reevaluation /FBA on April 6, 2023. The parent and district agreed that the documents sent home with the student were the documents signed and returned for consent.

Applicable Regulations and Conclusions

Once parental consent is received to conduct evaluation the district has a 60-school-day timeline to conduct the evaluation (34 C.F.R. 300.301(c) and K.A.R. 91-40-8(f)). The district must further respond to the parental request to conduct evaluation with a Prior Written Notice, either proposing to conduct the requested evaluation or refusing to conduct the requested evaluation (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)). Further, parents must be provided procedural safeguards to help the family understand the process. Under most circumstances, the Kansas State Department of Education considers 15 school days to be a reasonable time in which to respond to a parent's request for an evaluation.

The federal and state regulations prescribe the role of the Functional Behavior Assessment (FBA) when a manifestation determination is held. That is not the case in this situation. In this case the family requested an FBA due to the student's concerning behavior that was not responding to the current services. Therefore, the complaint

investigator treated the parent request for an FBA as a parent making a request for an evaluation in a specific area rather than a discipline action.

In this case there were two separate requests for an FBA, and each will be considered against KSDE's 15 school days as a reasonable timeframe to respond to the parent's request.

The first FBA request was made on March 1, 2023 and the district provided a PWN to the family on March 30, 2023 rejecting the request. According to the USD 259 Wichita Public Schools School Year Calendar for 2022-2023 March 10-17 were not school days and therefore the district needed to respond to the family with a PWN either agreeing with or rejecting the request by March 30, 2023. The PWN rejecting the request was sent according to documentation on March 30, 2023 and therefore the timeline was met. The school break for spring break extended the timeline.

The second FBA request was made March 28, 2023 and the district provided a PWN to the family on March 30, 2023 agreeing to conduct the FBA evaluation. Again, the district met the timeline for providing a response to the family withing the 15 day generally accepted timeline.

It is documented that the parent rights were distributed and that the evaluation 60 day timeline for completion is still open.

Based on the foregoing, it is ***not*** substantiated that USD #259 failed to respond appropriately to a parent request for a functional behavioral assessment. While the spring break days that are not school days did extend the time between request and response they do not count in the school's time for consideration.

> 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 PWN for the 16 things that are incorrect in the IEP.

Positions of the Parties

The family alleged that our student's IEP was wholly incorrect in many areas and was not caught by the IEP support staff until we brought it to their attention. There were 16

items that we believed were incorrect. The family stated that the district recognized this and have begun to correct some of these items in a stepwise fashion.

The district responded that they provided the family with appropriate PWNs for "the 16 things that are incorrect in the IEP." The district believes that the list of "16 things that are incorrect in the IEP" were part of an agenda for May 3, 2023 IEP continuation meeting that had 16 items on it and was sent in an email on April 28, 2023 to the family, which included concerns and/or questions Parents had sent to staff April 27, 2023, as well as items staff placed on the agenda to make sure got discussed.

Findings of the Investigation

The findings of Issue One are incorporated herein by reference.

The district and family agreed that the list of "16 things that are incorrect in the IEP" were part of an agenda for the May 3, 2023 IEP continuation meeting that had 16 items on it and was sent in an email on April 28, 2023 to the family, which included concerns and/or questions the family had sent to staff on April 27, 2023, as well as items staff placed on the agenda to make sure they were discussed.

Item 1: The family was having difficulty accessing ParentVue and the student's progress reports were not accessible in the last IEP meeting by any parent. As a result, the family requested a copy of the last three progress reports for review by email.

Evidence Item 1

Documentation provided by the district showed the progress reports for October, December, and March for the 2022-2023 school year were sent in an email to the family on April 28, 2023.

Item 1a: In the last February 28, 2023 IEP meeting, progress reports were not provided, and the goal scores were not finalized. After reviewing the most recent IEP the family learned that the student was not meeting any of his reported goals with the exception of the behavioral goal which should be excluded since it was just recently added in the last meeting. The family stated there may be a disconnect in the current plan which could be resulting in the student not meeting any of his benchmark goals. The family wanted to know how these goals were being addressed with the student's April 11, 2023 IEP.

Evidence Item 1a

The district reported the student showed growth/progress on his goals but stated that some life changes and challenges he experienced outside of school (moving between his parents' houses, outpatient treatment for mental health concerns, etc.) may have impacted his scores because they coincide with the timing.

Documentation from the March 22, 2023 IEP Meeting Notes and Progress Reports showed the Student was passing Math Intervention and Reading Intervention, had an F in Social Studies, a D in Technology, a D in Science, a B in Math, an A in Coding, and was Passing Advocacy. Progress Reports showed some of his IEP goal percentages went down between December and March, 2023. The May 3, 2023 Meeting Notes reported the IEP Team agreed to leave goals as drafted in the IEP provided.

Item 2) On page 2 of the February 28, 2023 IEP it stated the student's exceptionalities but excluded the student's diagnosis of "other specified depressive disorder" otherwise known as bipolar disorder. The student is currently being treated for Bipolar disorder. This was documented on Page 6, paragraph's 1 and 7 of his Psychology report listed in the IEP.

Evidence Item 2

The April 11, 2023 IEP documented that the "other specified depressive disorder" was listed both on p. 2 under Impact of Exceptionality and on p. 6 under Relevant Medical Information-Health Summary. It was listed on the May 8, 2023 PWN, "The IEP Team updated the Impact of Exceptionality statement by adding Other Specified Depressive Disorder."

Item 3) The family requested that the IEP team consider the outside report from St. Joseph's hospital to determine if any specific findings or recommendations needed to be included in the IEP. Additionally, they requested that the St. Joseph's hospital report be uploaded to the student electronic special education file.

Evidence Item 3

The May 3, 2023 IEP Meeting Notes showed that the IEP team accepted the St. Joseph discharge summary and determined to consider the full St. Joseph report at a later date

when a full copy of the report was obtained and upload the report to the student's electronic special education file.

Documentation in a follow-up email between the school's social worker and the district's hospital liaison that it was the practice of St. Joseph that a discharge summary would be the considered the full report since the student was in outpatient care.

The stepparent reported that the outside St. Joseph discharge summary has not yet been considered by the IEP team.

Item 4) The family reported that on Page 7 of the February 28, 2023 IEP under the behavior needs heading it was incorrectly written that a "A Functional Behavior Assessment has been conducted" and also that "A Behavior Intervention Plan is not warranted, current interventions are working". The parent questioned if the FBA was completed or was it being conducted and how were these interventions working if the student's measurable goals were not being met at their specified targets or outright failing classes?

Evidence Item 4

The May 3, 2023 meeting notes reported the FBA status was corrected to state that a functional behavior assessment will be completed within 60 school days of parent consent in the April 11, 2023 IEP.

The Behavioral Needs section of the April 11, 2023 IEP showed the IEP Team answered "Yes" to the question, "Does the student's behavior impede his or her learning, that of others, or their ability to access the general curriculum?"

Item 5) The family reported that under Physical Education Needs on p 8 of the February 28, 2023 IEP it stated that adapted PE was not needed. In response to the concerns the family had voiced earlier they requested that an accommodation be added for the student to use an alternate area to dress out due to sexually aggressive language and inappropriate comments to other students.

Evidence Item 5

Documentation showed that the April 11, 2023 IEP included the accommodation, an alternate location for dressing out when enrolled in classes that require changing clothes and the May 8, 2023 PWN documented that request and change.

Item 6) During the February 28, 2023 IEP meeting the family requested that an accommodation be added that the student be moved to a smaller group in any core classes he currently had a D or F in. This accommodation was not included in this February 28, 2023 IEP.

Evidence Item 6

The May 3, 2023 IEP Meeting Notes showed that the IEP Team reviewed edits to accommodations and parents requested wording that accommodation be changed to specify who would be providing para support/small group support when he was completing independent work and agreed to document in the plan how to support this accommodation at the school as well as a back-up plan for staff absences within the school team rather than recording it on the IEP. The Team agreed to keep the accommodation as, offer the student access to a smaller, alternative setting for testing and independent classwork.

The May 8, 2023 PWN stated that the accommodations were updated to include small group support during independent work.

Item 7) On page 13 of the February 28, 2023 IEP it was documented that the student had received ESY services in the past. This is incorrect to the family's memory.

Evidence Item 7

Documentation from the May 3, 2023 IEP Meeting Notes documented that the school verified that this was a paperwork error and corrected the box on the IEP. The April 11, 2023 IEP showed it was corrected.

Item 8) The family requested that the IEP team consider the student for ESY services as he showed active regression yearly during the summer and entering the new school year.

Evidence Item 8

The May 3, 2023 agenda documented that the IEP would consider and review data to determine if there were areas of significant functional, academic, and/or behavioral regression experienced by the student over extended breaks from school.

The May 3, 2023 IEP Meeting Notes documented that the IEP Team reviewed ESY guidance and student data/circumstances and determined that ESY services were not warranted.

The May 8, 2023 PWN documented that the district refused the parent request for ESY services for the student.

Item 9) On Page 16 of the February 28, 2023 IEP it stated that the IEP had determined the student's current placement meets his needs. The family questioned how the student's current placement is meeting his needs if he did not meet a single goal and at the last IEP meeting was failing three of his classes?

Evidence Item 9

The May 3, 2023 IEP Meeting notes documented that the school explained that Educational Placement referred to where the Student received his education relative to non-exceptional peers.

Documentation showed that the school asked the family if the concerns were about a specific academic or behavioral need that is occurring during the school day that would warrant a move to a more restrictive environment. It was noted that the family wished for the student to move to the adapted setting (services provided within a special education classroom with no non-exceptional peers). The district reported it reviewed academic and behavior data showing that the student was having success in the CWC setting (services provided within a general education classroom alongside non-exceptional peers) with current accommodations and services.

Documentation showed and the district reported it discussed that interventions implemented as part of the FBA process, Counseling services, and accommodations could help the student develop emotional/behavioral strategies to communicate his needs with school staff and feel more successful in the school setting. As a part of this discussion the team also reviewed his current grades. It is documented he was failing

computer coding (in which he had an A just two months before) and they discussed whether additional supports were needed.

Documentation showed the team agreed that the services of CWC for core courses will remain the same for the IEP year in order to allow for the supports of counseling, accommodations, and FBA strategies to be implemented before moving to a more restrictive environment.

The May 8, 2023 PWN documented that "[student] will continue to receive special education services for all core courses in a general education building, participating with non-exceptional peers for the same frequency and duration as his non-exceptional peers." and refused the Educational Placement change request, including an explanation of why the action was refused, options considered and why rejected, and a description of data used as a basis for the refusal.

Item 10) The family requested an increase counseling minutes and/or therapy services as a related service at the May 3, 2023 IEP meeting.

Evidence Item 10

Documentation showed that the IEP team discussed increasing the counseling minutes at the May 3, 2023 IEP team meeting by reviewing present levels, behavior data, and behavior goal data and determined he was making progress with the current services and supports. The family also requested mental health therapy services for the student.

The May 8, 2023 IEP documented that the district refused refuses to increase counseling services at this time including an explanation of why the action was refused, options considered and why rejected, and a description of data used as a basis for the refusal.

The May 8, 2023 IEP documented that "therapy" is not a related service and provided resources for community partners that offer mental health services.

Item 11) To track the student's behavior the student was hand carrying a tracking form to be completed by his teachers. The student destroyed at least some of the forms that reported negative behavior. The family reported that his negative behavior was underreported for this reason and requested that the tracking form be completed electronically.

Evidence Item 11

Documentation reported that the student refused to use behavioral tracking sheet.

Documentation reported that staff will transition to electronic behavioral tracking form filled out by teachers to gather data. Further, staff will collect electronic data and present it to the family at the April 11th meeting to review the student's progress within new interventions/accommodations.

Documentation from April 12, 2023 showed that the stepparent requested that the electronic behavior tracking sheet should continue to be implemented weekly. She further requested it be listed in the IEP.

Item 12) The family reported that a safety plan allowing the student to use an alternative passing period and/or a bathroom escort was not included in the February 28, 2023 IEP although discussion had occurred.

Evidence Item 12

The May 3, 2023 IEP Meeting Notes documented the team discussed an alternative passing period and use of a bathroom escort.

The April 11, 2023 IEP documented that an alternative passing period was added as an accommodation.

The May 8, 2023 PWN documented that an accommodation was added to the IEP to allow for alternative passing period.

Item 13) The family reported that an accommodation for a smaller setting to work on assignments was not included in the February 28, 2023 IEP although discussion had occurred.

The May 3, 2023 IEP Meeting Notes documented the team discussed this accommodation.

The April 11, 2023 IEP documented that "Offer access to a smaller, alternative setting for testing and independent classwork" was added as an accommodation.

The May 8, 2023 PWN documented that this accommodation was added to the IEP.

Evidence Item 13

Item 14) The family requested to know what the FBA Target Behavior(s) will be addressed in the functional behavior assessment that was agreed upon.

Evidence Item 14

Documentation from the April 11, 2023 IEP documented the following targeted behaviors:

- off task/disruption of the learning environment;
- inappropriate verbal comments/noises (moaning, cursing at peers or under his breath, laughing at inappropriate times, mocking/mimicking other students);
- inappropriate hand gestures (flipping off others);
- over-focused on others (staring at other students, hypervigilance/repeatedly looking around and surveying his surroundings).

The family reported they were interested in the FBA focusing on target behaviors that would manage off task behaviors, decrease destructive behaviors, and encourage independent schoolwork.

Item 15) The family reported that an accommodation for Shortening assignments to show mastery was not included in the February 28, 2023 IEP although discussion had occurred.

Evidence Item 15

The May 3, 2023 IEP Meeting Notes documented the team discussed this accommodation.

The April 11, 2023 IEP documented that "Shortened assignments (reduce workload as appropriate to learning standards)" was added as an accommodation.

The May 8, 2023 PWN documented that this accommodation was added to the IEP.

Item 16) The family reported that the student's afternoon medication was not being consistently provided to the student.

Evidence Item 16

Documentation from April 12, 2023 showed that the stepparent requested assistance in reminding the student to take his lunch medication from the nurse.

Documentation from the May 8, 2023 IEP Meeting Notes reported, "Parents want to add an (sic) accommodation to remind [student] to take his meds. Staff reports they send people to find [student] to take his meds."

Documentation from the May 8, 2023 IEP Meeting Notes reported, "Team decided to not add accommodation, states Nurse sends adults or makes arrangements with teachers to send student to take meds."

Parents reported "we were told there would be a three week trial from our IEP meeting on April 11th. The next meeting was on May 3rd, during this gap we were asked to get the student on an afternoon dose of ADHD medication. We had this in place and ready to go by the following Tuesday. The school only administered his medication during this timeframe between April 18th- May 3rd one to two times according to the student. When we brought it up, they said he wasn't remembering to come get his medication and blamed him. The school said they couldn't force a student to take their meds. I told them that the student was willing, but it was up to them to call him down for medication. They were not doing that, and per his IEP he has to be prompted to remember anything."

Applicable Regulations and Conclusions

Federal law at 34 C.F.R. 300.503 and 72-3430 direct the district's requirements for providing parental notice and requesting consent. The Kansas Special Education Process Manual, dated 2018 to guide districts to times in which a prior written notice is indicated for a special education action to include: initiate an evaluation, refuse to initiate initial evaluation or reevaluation, identification and eligibility determination, initial provision of IEP services (placement), reevaluation of a student, substantial change (more than 25% of student's day) in placement, change in placement that is 25% or less of the student's day, material change in services (25% of more of any one service) includes accommodations listed on the IEP, change in instructional methodology specified in IEP, change in service that is less than 25% of the service being changed, add a new service

or delete one completely, evaluation, reevaluation or initiate service for children parentally placed in private schools. The following actions require notification: notification of an IEP meeting, invitation of an outside agency to the IEP for secondary transition, use of Medicaid, and use of private insurance. Some of these actions require parental consent.

In this case none of the items necessitated parental consent based on the IEP team decisions but the items requiring a change to the IEP did require consent. In all cases it is found that the district provided PWN correctly for the items requiring PWN.

It is found that two of the items have not been completed according to IDEA and Kansas regulations.

Item 3, considering the outside St. Joseph's report: According to Federal regulations at 34 C.F.R. 300.305(a)(1)(i) a district must review existing evaluation data on the child, including information provided by the parents of the child. However, the school is not obligated to implement the recommendations made by the outside team.

In this case, It is found that the district has not met its obligation to date to consider the parent provided outside report. While the parent provided the discharge summary and the district agreed to consider it, a decision was made to wait until the full record was obtained. It is noted that it was only on May 8, 2023 it was learned that this was the final and official outside report with the final school day on May 24, 2023.

Item 14, involving the family in the evaluation (FBA) by specifying the target behaviors: According to federal regulations at C.F.R 300.305(a)(1)(i) and state regulations at K.A.R 91-40-8(c)(1)(A) the family should be involved in the planning of the evaluation. In this case the family has not been notified as to the specific target behaviors. It is noted that the district may be conducting the evaluation with these behaviors.

Although Item 16 was discussed during the May 3, 2023 IEP meeting and a decision made about medication the family continues to report that the student does not receive his medication regularly. While not out of compliance it would be recommended that the team discuss whether the student not taking his medication is the school's enacting its responsibility to not force a student to take a medication or the student's need for an accommodation to provide him the structure and support to manage his own health.

Based on the foregoing, it *is* substantiated that USD #259 failed to provide the parent with appropriate PWN for two of the sixteen things that are incorrect in the IEP.

ISSUE THREE: The USD #259, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide access to student's educational records, specifically IEP goal progress reports, grades, and a copy of the student's IEP.

Positions of the Parties

The complainants alleged that the IEP platform had not been accessible to all of the student's parents. The stepparent was removed as an active participant so could not see quarterly goals and/or grades and the IEP during the 2022-2023 school year. The stepparent was told she did not have rights to view as a stepparent and after much persistence the district admitted that she had those rights under FERPA law and permitted her access.

USD #259 responded the student's family had access to his educational records, including his IEP, IEP goals, IEP Progress Reports, and Grades. Grades were posted online at the conclusion of each semester, and mid-semester progress toward class grades is posted at the end of 1st and 3rd quarters. Grade Reports were posted to ParentVue at the conclusion of each semester and the school sent a ParentLink electronically to notify parents when grades were posted. The Student's special education records were on the other side of Synergy, but Parents could gain access via ParentVue in the same way they do for non-special education records, and they would not see any difference between accessing records that were housed on one or the other sides In addition to the parents having access to the Student's IEP, including goals, the student's IEP Progress Reports were contained in Synergy with access via ParentVue; however, as the school had an affirmative obligation to send IEP Progress Reports to parents, the school sent the Student's IEP Progress Reports to Parents each quarter via their preferred delivery method. Because the school had a form signed by Parents to send other information electronically, the final IEPs were sent via emails as documented in student logs.

Findings of the Investigation

The findings of Issue One and Two are incorporated herein by reference.

The district reported that ParentVue is an electronic platform used to provide parents access to grades and special education records such as progress reports and IEPs.

The district reported that grades were posted to ParentVue at the conclusion of each semester and at the end of the first and third quarters a mid-semester grade status was provided. The district reported that the district's ParentLink electronically notified parents when grades were posted.

The district reported that the student had access to grades and student progress via StudentVue, the electronic platform used to provide students access to grades and special education records such as progress reports and IEPs.

Documentation showed the student had five IEPs in effect during the 2022-2023 school year, May 5, 2022 IEP; February 8, 2023; February 28, 2023; April 11, 2023; May 17, 2023.

The district reported and documentation showed the school counselor sent weekly emails of the student's progress and included the contents of those emails in the Student Contact Log entries.

Documentation showed a campus support staff emailed the October, December, and March IEP Progress Reports to the family members on April 28, 2023 in response to family request.

The district reported and documentation from the Parent Consent for Receipt of Special Education Documents by Electronic Mail dated April 11, 2023 showed the parents signed that they indicated their preference to receive special education documents electronically. The district additionally reported that they sent the Student's IEP Progress Reports to Parents each quarter and the final IEP via their preferred, electronic delivery method.

The special education contact log provided by the district documented that in March 2022 (predating the one year from the file date of the complaint) the SLP stated that by state law, biological parents were the only ones with educational rights. Documentation later and parent report showed that the parent worked with the district office to correctly receive access to her stepchild's school records.

An email dated February 2, 2023 to the special education teacher documented that the stepparent reported she and the father were having issues with ParentVue.

Documentation showed that the school counselor emailed the district's technology support on April 19, 2023 stating that "several parents experiencing a glitch with

accessing ParentVue, getting an error when in the special education side of the electronic system where student records are kept". Documentation showed the support technician's email reply asked for more information and told the Counselor to make sure that parents were using the newer link to ParentVue.

Documentation showed that on April 20, 2023 the school's counselor emailed the family,

> Wanted to keep you posted regarding the Parentvue (sic) issues. According to our downtown people they have to get with the manufacturer regarding the app issues. However, they'd like us to make sure parents are using the following link when on a computer (not a Chromebook, tablet, or iPad- all of these actually use a mobile version of the app software). The downtown person tested all the access links for your parentvue (sic) accounts on the test server and it appears to work when on an actual computer. Once I hear anything more about the app I will forward that information on to you all.

Documentation showed that all family members were sent the finalized IEP electronically on May 15, 2023 at 1:50 p.m.

Applicable Regulations and Conclusions

This issue addresses two separate components of federal and state regulations. First, if the stepparent should have had access to the student's special education records and second, if the district completed its obligation to provide access to grades, progress notes and the student's IEPs to the parents.

According to K.S.A. 72-3404(m) Kansas defines "parent" according to six situations.

1. A natural (biological) parent;
2. An adoptive parent;
3. A person acting as a parent; "person such as a grandparent, stepparent or other relative with whom a child lives, or a person other than a parent who is legally responsible for the welfare of a child."
4. A legal guardian;
5. An officially appointed education advocate; or
6. A foster parent, if the foster parent has been appointed the education advocate of an exceptional child.

In this case the complainant meets the definition of parent for the student and legally has access to student records for the 2022-2023 school year along with both biological parents. Documentation provided by the district through general education and special education logs, emails and IEP signature pages demonstrated that the IEP and school teams included both parents and the stepparent in all school communications examined.

Documentation provided by the district demonstrated that one staff member in the district was incorrect in telling her that only biological parents have rights in regards with the student. It is reported by the stepparent that she had to expend extra effort to exercise those rights, but documentation during the 2022-2023 school year demonstrated that the stepparent had equal access to the student records as the biological parents.

The second part of this issue addressed parent (biological parents and stepparent) access to the IEP, special education progress reports and grades.

Federal regulations at 300.322 (f) and state regulations at K.A.R. 91-40-18(d) state that districts must provide families with a copy of the IEP free of charge. In this case the student had five IEPs in effect during the 2022-2023 school year, May 5, 2022 IEP (in effect beginning the 2022-2023 school year); February 8, 2023; February 28, 2023; April 11, 2023; May 17, 2023.

In this case it is found that the parents were provided a copy of the IEP via the ParentVue portal. Further, it was documented that a copy of the IEP was provided to the family upon request. It is noted however, that there were noted difficulties in access to ParentVue during the school year that necessitated the parents having to reach out to the district. While the district provided the requested documents in other ways it slowed down the parent's access to the parent's information.

Federal regulations implementing the IDEA at C.F.R., 300.320 (a)(3) and K.S.A. at 72-3429(c)(3) describes that districts must report "… the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards)"

In this case, it is found that the Progress reports and grades were completed according to the timelines specified in the federal and state regulations. Further, the grades and reports were placed in ParentVue, which parents had access to, but a newer link to

ParentVue made access troublesome and delayed access. It was found that the parents spent extra effort reaching out to the district to problem solve this access.

It is reported that the student had access to the progress reports, grades, and IEPs via StudentVue, however, his access should not be considered parent access to the documents.

Based on the foregoing, it is *not* substantiated that USD #259 failed to provide access to student's educational records, specifically IEP goal progress reports, grades, and a copy of the student's IEP.

It is noted however that ParentVue access was troublesome with the new access link and likely contributed to the family experiencing extra challenges in getting timely information for decision making. Although it does not rise to the level of failure to provide access it should be resolved to avert problems in the future.

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 regulations at 34 C.F.R. 300.305(a)(1)(i) specify that information provided by the family must review existing evaluation data on the child, including - evaluations and information provided by the parents of the child.

   In this case, the evidence supports the finding that USD #259 did not consider the St. Joseph discharge summary. Documentation shows this. It is noted that the school accepted the discharge summary but believed that a full report was coming and documented that they would review and consider it. They later learned that the discharge summary would be the only report but have not yet considered it.

B. Federal regulations at C.F.R 300.305(a)(1)(i) and state regulations at K.A.R 91-40-8(c)(1)(A) the family should be involved in the planning of the evaluation.

   In this case parent report and documentation supports the assertion that the family has not been notified as to the specific target behaviors. It is noted however, that the district may be conducting the evaluation with these behaviors, but the investigator was unable to determine what the target behaviors were since the FBA is ongoing.

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 comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at Federal regulations at 34 C.F.R. 300.502(c)(1) and state Regulations at K.A.R. 91-40-12 by ensuring that any outside evaluations received from parents are considered by the IEP teams.
2. Within the six weeks of the start of the 2023-2024 school year USD #259 will submit to Special Education and Title Services (SETS) documentation that the student's IEP team considered the discharge summary report from St. Joseph's hospital.
3. Further, by the start of the 2023-2024 school year USD #259 will provide the target behaviors under evaluation with the ongoing FBA to the family and submit to Special Education and Title Services (SETS) documentation that this has been completed. If the target behaviors are not those included in the parent's request as stated in this report the IEP team will meet and consider the parent's requested target behaviors USD 259 will provide to Special Education and Title Services (SETS) documentation showing the IEP team agreeing on the target behaviors within one month of the start of the 2023-2024 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 of 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, 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 MAY 25, 2023

DATE OF REPORT MAY 30, 2023

This report is in response to a complaint filed with our office on behalf of ---------- by ----------, a former school employee at USD #260. In the remainder of the report, ---------- will be referred to as "the complainant" and ---------- will be referred to as "the student."

The student is the son of ----------. They will be referred to as "the parents" or "the father" or "the mother" respectively. It is noted that the parents chose not to provide written consent for personally identifiable information contained in this investigation report to be shared with the complainant.

The complaint is against USD #260 (Derby Public Schools). In the remainder of the report, "USD #260," 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 and USD #260 received the complaint on May 25, 2023 and the timeline to investigate the allegations was extended by seven days to allow the parents to participate in the investigation process.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the Director of Special Education, Dawn Gresham, by telephone on May 26, 2023. The parents were interviewed by telephone on June 5, 2023 as part of the investigative process. The complainant was interviewed by telephone on June 13, 2023.

In addition to interviews, the Complaint Investigator reviewed documentation provided by the complainant, the parents and the LEA. While all of these documents were used to provided background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Email dated August 23, 2022 at 12:56 p.m. written by Kaitlyn Simmonds, School Psychologist, to Dawn Gresham, Director of Special Education, regarding assistance with a hearing assessment for the student during the initial evaluation
- Email dated August 23, 2022 at 3:06 p.m. written by Ms. Gresham to Ms. Simmonds with such arrangements
- Prior Written Notice for Initial Evaluation or Reevaluation and Request for Consent dated August 23, 2022 and signed by the mother on August 29, 2022.
- Notice of Special Education Meeting dated September 23, 2022 scheduling an eligibility determination and IEP team for October 3, 2022
- Initial Evaluation/Eligibility Team Report dated October 3, 2022
- Individualized Education Plan (IEP) dated October 3, 2022
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated October 3, 2022 and signed by the parents on the same date

Background Information

This investigation involves a four-year-old male who attends the Park Hill Early Childhood Program in USD #260. The student was initially referred for a special education evaluation at the beginning of the 2022-23 school year due to speech and hearing concerns noted during an IDEA child find screening conducted for children ages three through five in the district in April 2022.

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 complainant raised one issue that was investigated.

ISSUE ONE: The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to conduct a full and individualized special education evaluation of the student during the 2022-23 school year.

Positions of the Parties

The complainant reported the student was denied early childhood special education and related services for a hearing impairment. The complainant stated:

> The student is suspected of having a hearing loss but to my knowledge has not had an audiological evaluation. He showed delays in 2 developmental areas, meeting the exceptionality of DD [Developmental Delay] but received only related services.

The complainant said that she did the initial screening for the student. She indicated that she was told by a co-worker that the student was not offered early childhood special education services.

USD #260 reported that all the steps in the initial special education evaluation process were followed appropriately for the student during the 2022-23 school year. School staff noted the parents provided written consent for an initial evaluation on August 29, 2022 and the student was subsequently assessed in all areas of suspected disability. The multidisciplinary team determined the student was eligible for special education and related services under the exceptionality category of Developmental Delay (DD) in the areas of communication and physical. An IEP was then developed to provide the student with a free appropriate public education (FAPE) and the parents' written consent for services and placement was obtained on October 3, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents of the student, the complainant, and LEA staff in USD #260.

The student participated in a routine early childhood screening through USD #260 for articulation, vision and hearing screening on April 11, 2022. At that time he passed the vision screening but failed the hearing and articulation screenings.

Booth evaluation was conducted on April 21, 2022 by Kayla Eldridge, School Audiologist, and indicated a mild to moderate hearing loss bilaterally. The parents sought medical care and obtained hearing aids for the student during the summer of 2022.

The LEA proposed an initial evaluation of the student in all areas on August 23, 2022 and the parents provided written consent that same day. An arena style evaluation was conducted on August 29, 2022. In addition, individual assessments were conducted in the areas of gross/fine motor, communication, and cognition.

This evaluation also included an observation by Molly Pourhussin, Teacher for the Deaf and Hard of Hearing in USD #260. She stated:

> When observing his auditory needs, I notice when Kaitlyn [school psychologist] asked the questions, he didn't need to look at her. He was looking at the pages in front of him. I made a series of noises outside his three foot speech bubble. He did not turn his head or indicate in any way that he heard the sounds. Usually, kids of his age will ask, "What's that?" Based upon my observation, the student would qualify for an FM system in the classroom. Outside of his listening bubble, he indicated that he could hear noise 0 out of 5 times.

The multidisciplinary team met on October 3, 2022 and determined the student met the eligibility criteria to be identified as a child with a developmental delay in the areas of communication and physical/motor skills. An IEP was developed on that same day which required physical therapy (PT), occupational therapy (OT), speech/language therapy, and the use of an FM system in the preschool setting. USD #260 provided the parent with PWN for initial eligibility, a significant change in services and a substantial change of placement. The parents provided written consent on that same date and the IEP has been implemented as written since that date.

An interview and email written by the mother on June 5, 2023 showed that the parents believed the student's initial evaluation and subsequent IEP were appropriate, provided FAPE to the student, and USD #260 had included them in the evaluation and IEP process. The mother stated:

> This allegation referencing our son, student, is false. On April 11, 2022, I took the student to the Carlton Learning Center to be tested to see if he qualified for speech therapy services through the school district. It was at this evaluation that it was determined that he had some hearing loss, but would need further testing to be more accurate. On April 21, 2022, I took him back to the Carlton Learning

Center for a full hearing evaluation inside an audiologist booth, we were then referred to Via Christi for further evaluations. It was determined on May 6, 2022 that he had permanent hearing loss in both ears and would need to wear hearing aids for the rest of his life, and they were unable to tell if it will increasingly get worse over time or if it will remain consistent with those findings.

During this process I was in communication with the districts audiologist, and as soon as the student had his hearing aids he was put back in the evaluation process for available services through the district. The testing identified that he qualified for speech therapy as well as occupational and physical therapy. In the 2022-2023 school year, the student went once a week for occupational and physical therapy and twice a week for speech therapy. This schedule was set during an in person meeting with 5-7 special service employees, the principle of Park Hill Ms. Gretchen Pontious, my husband and myself.

If it were not for Derby's special services programs, he would not of gotten hearing aids as soon as he did nor would he have made the strides to catch up to his peers prior to reaching kindergarten, 2024-2025 school year. All of the teachers and specialist that we have worked with have been nothing but wonderful throughout the entire process.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.301(c)(2) require school districts to conduct initial evaluations to determine if the child is a child with a disability and to determine the educational needs of the child.

In this case, USD #260 conducted child find activities through routine screening in April 2022 when the student was three years of age. At that time, USD # determined the student may be a student with a disability and in need of special education and related services. The parents sought medical care for hearing concerns and obtained hearing aids for the student during the summer of 2022.

USD #260 provided the parents with PWN for an evaluation in all areas on August 23, 2022 when school resumed for the 2022-23 school year. An arena style evaluation and individual assessments were completed. The multidisciplinary team, including the parents, met on October 3, 2022 and determined the student met the eligibility criteria to be identified as a child with a developmental delay in the areas of communication and physical/motor skills. An IEP was developed on that same day which required PT, OT,

speech/language therapy, and the use of an FM system in the preschool setting. USD #260 provided the parents with a PWN for initial eligibility, initial services, and initial placement on October 3, 2022 and the parents provided written consent. .

Based on the foregoing, a violation of special education statutes and regulations *is not* substantiated for failing to conduct a full and individualized special education evaluation of the student during the 2022-23 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. 91-40-51(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 May 30, 2023

DATE OF REPORT June 28, 2023

This report is in response to a complaint filed with our office by ---------- mother, on behalf of her daughter, ----------. 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 #233 (Olathe Public Schools). In the remainder of the report, USD #233 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 5/30/2023. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on 6/30/2023.

Investigation of Complaint

Doug Tressler, Complaint Investigator, interviewed the parent by telephone on June 7, 2023, as part of the investigation.

USD #233 made the following school staff available for a telephone interview on June 8, 2023:

- Deborah Chappell, Assistant Director of Special Services
- Andrea Cronin (English Co-Teacher, Special Education Teacher)
- Heather Smith (Assistant Principal)
- Careth Palmer (English Teacher)
- Stephanie (Stevie) Less (Special Education Teacher, Case Manager)
- Tom Salas (Special Education Coordinator for ON)
- Ashley Enz (Special Education 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:

- Statement from Andrea Cronin resource room teacher
- Statement from Careth Palmer English teacher
- Discipline records and behavior agreement
- Student discipline referral dated April 18, 2023
- English III career syllabus school year 2022- 23
- Current evaluation for the student
- The current IEP dated September 23, 2022, amended April 25, 2022.
- Current grade card
- Staff emails documenting accommodations

Background Information

The student is a junior at Olathe North High School and is on track to graduate with peers since the start of the academic school year 2022-2023, the student has struggled to effectively communicate when the student has a problem or perceived issue or conflict.

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.

> ISSUE ONE: The USD #233, in violation of the state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the accommodations listed in the IEP.
>
> ISSUE TWO: The USD #233 staff engaged in bully behavior towards the student in violation of KSA 72-6147.

While the parent specifically noted issue two in the complaint, IDEA does not address this issue therefore it was not within the scope of this investigation and was not investigated.

Positions of the Parties

The parent believes the English teacher does not respect the IEP accommodations that were agreed on and bullies (the student) when (the student) needs to have the accommodation.

USD #233 The District denies the parent's allegation that the accommodations listed in the student's IEP were not provided. The student's IEP dated 9/23/22, and subsequent amendment dated 4/25/23 include the following accommodations:

(1) Extended time to complete assessments x 1.5.
(2) Noise-canceling headphones/earbuds during independent work time, as requested by the student and approved by the instructor/adult.
(3) Take tests in a quiet, alternate, non-competitive, small group setting.

The district asserts that these accommodations were implemented by the teacher cited in the complaint as required by the IEP. In addition, the school put in place other supportive instructional practices beyond those included in the IEP to meet the student's individual needs. These included providing breaks within the parameters of a behavior contract and time extensions for a long-term assignment. Through implementation of the IEP and these general supports, the student made appropriate progress toward (the student's) IEP goals (see Progress Report dated 5/24/23) and maintained Bs and Cs in (the students) classes (see Report Card).

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.

Per the IEP dated September 23, 2022, amended April 25, 2022, the following accommodations were in effect:

- Extended time to complete assignments times 1.5 because the exceptionality requires extra processing time for comprehension this will be provided during assessment in the general education classroom for the duration of the assessment.

- Noise cancelling headphones/ earbuds during independent work time, as requested by the student and approved by the instructor or adult to eliminate distractions. This will be provided during independent work time in general education and special education classrooms. This accommodation will be provided for the duration of the independent work time as requested by the student and approved by the instructor/adult.
- Take a test in a quiet alternate noncompetitive small group setting to eliminate distractions. This will be provided during assessments and all general education and special education classrooms. This accommodation will be provided for the duration of the assessment as requested by the student.

Per the discipline report, an incident occurred, dated April 18, 2023, after the teacher made the announcement that the absent students needed to get the handout from yesterday. The student grabbed the wrong one (handout). The teacher redirected her and told the student that she had picked up the wrong packet three times. The teacher asked "why are you ignoring me?" The student continued to ignore the teacher. The teacher told the student to return the wrong paper and pick up the correct packet. The student was angry and threw her materials down, got stuff out of her bag, put stuff in her bag, and then began texting someone on the phone. Five minutes later the student got up and walked out of the room. The teacher asked for a pass. The student ignored the teacher and walked out. The teacher called the office per the behavior contract requiring that the student not leave class without a pass.

During the phone interview with the staff, it was revealed that when the incident occurred the teacher was providing direct explicit instruction concerning the daily assignment and the packet the students were instructed to use. Staff also indicated that the instructions given to the student were the same instructions that were given to all other students. Staff explained that the student picked up the wrong packet and was asked to return that packet so that the student could pick up the appropriate packet which contained her assignment. During this direct instructional time the teacher is required to have the student's attention and to have the ability to fully communicate with the student using a verbal medium. Staff indicated that the use of headphones throughout the building is inconsistent. Each teacher has specific classroom rules with regard to the use of headphones during the day. Students are often allowed to use headphones in common areas such as the lunchroom. Staff also indicated that the student had received verbal reprimand for misuse of the headphones during the school day on previous occasions.

The teacher's expectations for cell phones and earbuds are clearly explained in the teacher's syllabus for English 3. Furthermore, during the phone interview, the teacher indicated that she reviews the syllabus piece-by-piece at the 1st of each semester.

English III Syllabus:

- Technology (Laptops, Cell Phones, & Earbuds):
    - You should bring your charged laptop EVERY DAY. While personal devices are permitted for academic usage in the classroom, I have the discretion to ask the student to put away cell phones or remove earbuds if they become a distraction to the student, or if we are taking an assessment of any kind.

Behavioral records also indicate that the student has been reprimanded for misuse of phones on April 14, 2022, April 19, 2022, May 10, 2022, and October 3, 2022.

Behavioral records further indicate that the student was reprimanded for ignoring staff or walking out of the classroom without permission May 10, 2022, September 20, 2022, September 21, 2022, October 3, 2022, and January 30, 2023.

The students 's tendency to elope when in a stressful situation is identified as a concern in the IEP. The baseline recorded in the IP reads as follows: "since the start of the academic school year 2022-2023 the student has struggled to effectively communicate when (the student) has a problem or perceived issue or conflict which resulted in (the student) leaving the classroom without permission and or acknowledgement from teachers/adults". This is addressed by a goal as follows: "(the student) will communicate respectively and effectively in all diverse environments with teachers adults peers and OTAC program professionals with 80% accuracy as averaged by the IEP team using the social emotional rubric by September 22, 2023". Nowhere in the student's IEP is leaving the classroom without permission listed as an allowable accommodation.

During the phone interview on June 7, 2023, the parent indicated that the primary concern was related to the use of the accommodation allowing for noise cancelling headphones during work time.

In relation to the student's accommodation allowing for extended time, the teacher statement provided by the English teacher indicated that on Monday May 15, 2023, the lesson plans included specific instructions for the class concerning the packets that they were to pick up each day. The teacher noted that extended time for the packet was offered as an accommodation to the student.

Further notes from the teacher statement indicates that on Tuesday May 16, 2023, more extended time was offered to the student including the opportunity to take the packet home as part of the extended time accommodation. This student was absent on the following day May 17, 2023, and the teacher allowed the student to continue to work from home on the packet as a continuance of the extended time accommodation. When the student returned after having the assignment for three days, the assignment was still incomplete. The teacher also notes that the student's overall performance in the classroom is above average and the student finished this semester with an 82%.

The statement provided by the special education teacher, "(the student) has been given (the student's) accommodations throughout the school year. (The teacher) has been very deliberate about checking with (the resource room teacher) and the (paraeducators) to ensure (the resource room teacher and the paraeducators) are following the IEP. (The teacher) has also been just as delivered about following the behavior plan and double checking with (the resource room teacher) and the (paraeducators). The referral written was due to (the teacher) having to follow the behavior plan. (The teacher) has never raised her voice to a 'yelling' level to any student or punished any student out of spite." indicates that the student was allowed all accommodation required by the IEP on all occasions in which the accommodation was necessary.

Multiple staff emails between Para educators stating when and where accommodations were used by the student on a daily basis to the resource room teacher indicate that the accommodations were used effectively by the student in multiple classrooms as needed by the student in accordance with the IEP.

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)).

K.A.R. 91-40-16. (b)(5)(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

The evidence of teacher daily notes and lesson plans detail precise use of extended time and headphone use as accommodations being allowed for the student. The samples of daily email reports from paraeducator staff to the special education teacher recording specific use of the accommodations in the IEP indicate that the accommodations of extended time, noise cancelling headphones/earbuds, and testing in an alternate location were provided on all occasions as allowed by the IEP. As the participating general education IEP team member, the teacher was aware of all accommodations listed in the IEP and the responsibility to implement the accommodations in the general educational setting as a part of the IEP. This was also indicated in the teacher's written statement "(the teacher) provided all of the accommodations on the students IEP. The student was never removed from my classroom but chose to work on (the student's) packet Friday during third hour in (the student's) resource room so the student could focus better." The implementation of the allowed accommodation for extended time is well documented in the teacher's daily notes which outlines that the student was allowed to take the assignment related to the incident home for two days, well, beyond the allowed extension of 1.5 X the peer level time. During the incident in question, on May 15, 2023, according to the teacher's daily lesson notes the teacher was giving direct explicit instruction to the class, the student did not have permission to use the earbuds, and it was not an independent study time. The accommodation for the noise canceling earbuds is conditioned upon teacher approval during independent study times therefore, the accommodation was not allowable as defined in the IEP at that time. While the teacher did provide evidence of classroom expectations and had daily lesson notes that included allocated time for direct instruction, guided instruction and independent study, there was no mechanism for explicit guidance to the student that would inform the student which instructional condition was in effect. Best practice to increase student engagement, would be a visual cue such as a posted reminder schedule of direct instruction, guided Instruction and study time with the associated accommodations allowed in each segment. Never-the-less, the final authority for use of the ear-bud accommodation as written in the IEP is teacher approval.

Based on the foregoing, a violation of special education statutes and regulations *is not* substantiated for failure of the general education teacher to implement the accommodations listed in the IEP.

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.

Doug Tressler
BS Elem Ed, MS Sp Ed, MS Ed Admin
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 MAY 25, 2023

DATE OF REPORT JULY 1, 2023

This report is in response to a complaint filed with our office on behalf of ---------- by ----------. In the remainder of the report, ---------- will be referred to as "the student." ---------- will be referred to as "the complainant," "the parent," or "the mother." ---------- will be referred to as "the father." When referring to ---------- mother and father in this report they will be referred to as "the parents" or "the family."

The complaint is against USD #233 (Olathe Public Schools) who provides general and special education to students in their district and are the responsible agency. In the remainder of the report, "school" or the "district" may be named, but in all cases shall refer to the 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 May 25, 2023 and the 30-day timeline ends on June 26, 2023. An extension of one week was requested by the Complaint Investigator and granted by the KSDE for a revised due date of July 1, 2023.

Investigation of Complaint

Donna Wickham, Complaint Investigator initially interviewed the parent by telephone on May 30, 2023. Additionally, the Complaint Investigator exchanged emails, texts, and phone calls and messages with the mother between May 25, 2023 – June 23, 2023.

The Complaint Investigator exchanged emails with Ms. Deborah Chappell and Mr. Matt Kunstman between May 25, 2023 through June 26, 2023 to gather additional information and to clarify documentation provided by the district.

This investigation addressed six issues. Two additional issues were identified but *were not investigated because they did not fall under the IDEA regulations*. All materials provided by the complainant and district were carefully read. The following materials submitted by the family and district were used in consideration of the issues. They include:

School Based Medicaid in Kansas Fact Sheet Special Education and Title Services, Revised April 2019
Oregon Trail Middle School Period Student Attendance Profile Year: 2022 – April 17, 2023
Behavioral Sciences Regulatory Board Licenses for Kelley Hull and Rebecca Schwer
Kansas State Board of Education Licenses for Gracyn Miller, Chloe Smith, Nicholas Hofmeier, Karen Fraley, Denise Herman, Johnathan Lynk, Matthew Kunstman, Anthony Neubauer, Ashley Rodden, Jennifer Kaberline, Susan Stessman-Fairley, Catherine Stein, Alison Antwiler, and Kathy Olson.
Kansas State Board of Nursing License for Kathleen Waage
Email from Ms. Denise Herman, Assistant Principal, Oregon Train Middle School to Olathe Trails Middle School staff dated August 7, 2022 at 4:14 p.m. including handouts below:

- Special Education and 504's at Olathe Trails Middle School
- How to Access Special Education and 504's at Olathe Trails Middle School
- Reference Guide to Accommodations
- Modifications, Accommodations, Interventions
- Olathe Public Schools "Guidelines for Grading students with Disabilities" Draft December 8, 20211
- Possible Accommodations/Interventions/Supports for Struggling Learners
- Benefits of Inclusion
- Challenging Behaviors: Crisis Prevention
- General Considerations for Children with Special Needs
- Accommodations and Modifications grid
- Executive Functioning Skills: The Ultimate Guide

Email from parent to Mr. Nicholas Hofmeier, Case Manager, Olathe Trails Middle School dated August 21, 2023 at 9:33 p.m.
Email from parent to Ms. Olson, Mr. Hofmeier, Ms. Herman and Mr. Kunstman dated August 28, 2022 at 4:22 p.m.
Email from parent to Ms. Herman, Mr. Hofmeier, and Mr. Matthew Kunstman, Special Services Coordinator dated September 20, 2022
Student Point Sheet dated September 2022 (handwritten note of date)

Email from parent to Ms. Herman, Mr. Hofmeier and Mr. Kunstman dated September 24, 2022 at 10:44 p.m.
Email from parent to Mr. Hofmeier, Ms. Herman, and Mr. Kunstman dated September 27, 2022 at 8:23 p.m.
Email from parent to Ms. Mollie Cooper, culinary teacher, Olathe Trails Middle School, Ms. Herman, and Mr. Hofmeier dated September 27, 2022 at 8:52 p.m.
SPED PLC Agenda dated October 26, 2022
Email exchange between parent and Ms. Cooper dated December 4, 2022 at 8:58 p.m. through December 5, 2022 at 7:44 p.m.
Email exchange between father and Mr. Gregori Hammons, automation and robotics teacher, Olathe Trails Middle School dated between December 1, 2022 at 9:23 p.m. and December 7, 2022 at 2:49 p.m. and
Email from Ms. Gracyn Miller, School Psychologist, Olathe Trails Middle School to student's IEP school team dated January 4, 2023 at 3:50 p.m.
Email from parent to Mr. Neubauer, Mr. Hofmeier, Ms. Herman, and Mr. Kunstman dated January 14, 2023 at 1:38 p.m.
Email from parent to Ms. Antwiler, Mr. Hofmeier, Ms. Herman, and Mr. Kunstman dated January 14, 2023 at 1:42 p.m.
Email from Mr. Kunstman to Ms. Herman, Mr. Johnathan Lynk, Principal, Oregon Trail Middle School; Ms. Miller, and Mr. Hofmeier dated January 19, 2023 at 10:08 a.m.
Email between parent and Mr. Kunstman between January 19, 2023 at 8:52 p.m. and January 20, 2023 at 8:07 a.m.
Email from parent to Ms. Herman, Ms. Olson, Ms. Stein, Mr. Neubauer, and Ms. Antwiler dated January 31, 2023 at 9:04 a.m.
Email exchange between parent, Mr. Hofmeier, Mr. Kunstman, Ms. Miller and Ms. Herman dated January 31, 2023 between 9:29 p.m. and 10:05 p.m.
FAST TM Family Report dated, Winter 2022-2023
Email from parent to Dr. Jim McMullen, Assistant Superintendent, Middle School Education; Mr. Kunstman; Mr. Lynk; Ms. Herman; Karen Fraley, Resource Teacher, Olathe Trails Middle School; Mr. Hofmeier; Anjanette Toman, Special Education Director; and Ms. Miller dated March 8, 2023 at 7:43 a.m.
Email exchange between parent and Ms. Herman dated March 30, 2023 between 7:52 a.m. and 3:08 p.m.
Email exchange between Ms. Miller and Mr. Jeffrey Wilson, Outside ADHD consultant dated between March 31, 2023 at 2:30 p.m. and April 6, 2023 at 12:08 p.m.
HIPPA Complaint Authorization for Exchange of Health & Education Information with Ms. Maria Little, MSN, APRN, consent signed by parent on March 31, 2023

HIPPA Complaint Authorization for Exchange of Health & Education Information with Mr. Wilson, MA, LCPC, LPC, LMHC, CCMHC, NCC consent signed by parent on March 31, 2023
Email from Ms. Maria Little to parent dated April 5, 2023 at 1:56 p.m.
Email from parent to Ms. Miller, Mr. Kunstman, Ms. Herman, Mr. Lynk, and Mr. Hofmeier dated April 11, 2023 at 10:43 p.m.
Manifestation Determination and Review dated April 12, 2023
Email from parent to Ms. Miller dated April 12, 2023 at 10:28 a.m.
Letter from Ms. Herman to parent dated April 12, 2023
Letter from Mr. Matthew Johnson, Chairman, Suspension and Expulsion Hearing Committee, Olathe Public Schools to parents dated April 13, 2023
Email exchange between Ms. Miller and Mr. Wilson dated between April 13, 2023 at 2:47 p.m. and April 14, 2023 at 7:53 a.m.
Confidential Psychoeducational Evaluation dated May 1, 2023
Individualized Education Program Amendment dated May 1, 2023
Functional Behavior Assessment Plan dated May 1, 2023
Email from Ms. Miller to parent dated between April 28, 2023 at 1:45 p.m. and May 1, 2023 at 9:19 a.m.
Email from Mr. Christopher Pittman, Olathe Staff Counsel to parent dated May 30, 2023 at 3:55 p.m.
Email from Mr. Lynk to Ms. Chappell, Mr. Kunstman, Ms. Miller, and Ms. Herman dated June 6, 2023 at 8:25 a.m.
District Response dated June 8-12, 2023
Email from Ms. Chapman to Dr. Donna Wickham, Complaint Investigator dated June 14, 2022 at 4:00 p.m.
Email between Mr. Kunstman and Dr. Wickham dated June 20, 2023 between 11:22 and 11:52 a.m.
Email from Mr. Kunstman to Dr. Wickham dated June 22, 2023 at 10:37 a.m.
Email from Mr. Kunstman to Dr. Wickham dated June 22, 2023 at 1:58 p.m.
Email from parent to Dr. Wickham dated June 22, 2023 at 10:30 p.m.
Email from parent to Dr. Wickham dated June 23, 2023 at 8:22 a.m.

Background Information

This investigation involves a 13-year-old seventh grade student at a middle school in the district. He receives special education and related services under the eligibility category of Other Health Impairment. He has been a student in this district since kindergarten and became eligible for special education services under the eligibility category of Other

Health Impairment in third grade. He has medical diagnoses of ADHD and Chronic Anxiety Disorder, with more specific problems with panic disorder and school avoidance.

The student's IEP was revised May 1, 2023 and includes input from a recent reevaluation to better meet the student's disability's impact on learning. The May 1,2023 IEP indicates his behavior impacts his learning or the learning of others; a functional behavior assessment is under development, and he uses assistive technology accommodations. The IEP lists three goals for following direction, initiating tasks, and completing a task list. Sixteen types of accommodation are included in the IEP and the student receives accommodations for annual testing. The student received a suspension following a behavior on April 6, 2023 that culminated in a Manifestation Determination and long-term suspension for the remainder of the 2022-2023 school year. He was offered alternate services and completed assignments for his 7th grade coursework through the end of the school year. He is scheduled to return to the middle school for the 2023-2024 school year as an 8th grader with an IEP dated May 1, 2023.

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 for the 2022-2023 school year.

> ISSUE ONE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide qualified staff for the student during the 2022-2023 school year.

Positions of the Parties

The complainant alleged that staff who work with the student were not qualified to teach students with ADHD and their unique learning needs.

USD #233 responded all of the staff on the student's IEP team, including his direct services providers, were appropriately qualified and current on their certifications by the Kansas State Department of Education or other appropriate licensing agency for the

position they hold. The multidisciplinary team was composed of a variety of professionals with a broad range of expertise and training. The IEP team included several individuals with behavioral, social/emotional, and mental health competencies necessary to address the students' needs related to ADHD, behavioral concerns, anxiety, and executive functioning.

Findings of the Investigation

Documentation showed the student was eligible for special education services under the category of Other Health Impaired. He had medical diagnoses of ADHD and Chronic Anxiety Disorder, with more specific problems with panic disorder and school avoidance.

Documentation showed six IEPs were in effect during the 2022-2023 school year (April 11, 2022; December 12, 2022; March 1, 2023; April 10, 2023; April 20, 2023 and May 1, 2023) and included the following IEP team members.

Name	Position	Licensure
Kelley Hull	Social Worker	Licensed Master Social Worker (Behavioral Sciences Regulatory Board) Expires 3/31/24
Rebecca Schwer	Behavior Coach	Licensed Professional Counselor (Behavioral Sciences Regulatory Board) Expires 6/30/24
Gracyn Miller	School Psychologist	School Psychologist (EC-12) KSBE Expires 5/27/24
Chloe Smith	School Counselor	School Counselor (PRK-12) KSBE Expires6/1/2024
Nicholas Hofmeier	Case Manager	Adaptive & Functional K-12 KSBE Expires 12/17/25
Karen Fraley	Resource Teacher	Behavior Disorders K-12 KSBE Expires 1/20/25
Denise Herman	Assistant Principal	Learning Disabilities; Bld Ldrshp KSBE Expires 5/22/25
Johnathan Lynk	Principal	Building Leadership KSBE Expires 4/15/26
Matthew Kunstman	Special Services Coordinator	Building Leadership; Intellectual Disability (7-12) KSBE Expires 5/6/28
Anthony Neubauer	Science Teacher	Science (5-8) KSBE Expires 10/15/27
Catherine Stein	Social Studies Teacher	History, Government, and Social Studies (5-8) KSBE Expires 11/10/23
Alison Antwiler	Math Teacher	Mathematics (5-8) KSBE Expires 2/10/24
Kathy Olson	English Language Arts Teacher	English Language Arts (5-8) KSBE Expires 10/8/24
Kathleen Waage	Nurse	Registered Nurse License Expires 11/30/24

Name	Position	Licensure
Ashley Rodden	School Counselor	School Counselor PRK-12 KSBE Expires 5/9/29
Jennifer L Kaberline	School Psychologist	School Psychologist PRK-12 KSBE Expires 6/1/25
Susan Stessman-Fairley	Special Education, Case Manager	Adaptive Special Education 6-12 KSBE Expires 9/2/25
Danielle Haldeman	School Psychologist	School Psychologist PRK-12 KSBE Expires 4/1/24
Richard Hoisington	General Education Teacher	Early-Late Childhood Generalist K-6 KSBE Expires 8/11/25
Rich Kessler	General Education Teacher	Early-Late Childhood Generalist K-6 KSBE Expires 6/19/25
Celeste Neubauer	General Education Teacher	Early-Late Childhood Generalist K-6 KSBE Expires 4/29/26
Lesley Sheldon	General Education Teacher	Elementary and Library Media K-9 KSBE Expires 7/26/25

Documentation from the Olathe Staff Counsel on May 30, 2023 stated,

3. The IEP team did not adopt Parent's proposal to add an ADHD specialist/coach to the team for the following reasons. The service providers on [student's] IEP team are appropriately licensed by the Kansas State Department of Education to implement [student's] IEP and special education services. [student's] IEP team included individuals with expertise in ADHD such as a district behavior coach, school psychologist, school counselor, school nurse, and student's resource teacher. The Kansas State Department of Education does not offer teacher endorsement in "ADHD Specialist." [Student's] IEP team members and service providers have the necessary experience and qualifications to meet his needs related to ADHD.

Applicable Regulations and Conclusions

According to 34 at C.F.R. 300.156(c)(1) and 34 at C.F.R. 300.207 school districts must ensure that all personnel necessary to implement the IEP are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve children with disabilities. Further, each teacher employed by a public school as a special education teacher must meet KSDE qualifications. (34 C.F.R. 300.156(c).

It is found that all of the education and related services personnel who were listed on the IEPs as providing services to the student possess the necessary qualifications and hold current licenses or certifications to serve in their respective roles.

Based on the foregoing, *it is not* substantiated that USD #233 failed to provide qualified staff for the student during the 2022-2023 school year.

> ISSUE TWO: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to train general education staff on how to work with the student during the 2022-2023 school year.

Positions of the Parties

The family alleged that staff who work with the student were not trained to teach students with ADHD and their unique learning needs.

The district responded that the student's IEP did not require staff training of any sort. If staff training were included in the IEP, it would have been documented under the section of the IEP titled, "Supplementary Aids and Services (Accommodations, Modifications, and Staff Training)." However, training was provided to general and special education staff with regard to how to work with the student during the 2022-2023 school year. Also, general and special education staff at the Middle School received training for how to work with the student through a variety of opportunities and formats during the 2022-2023 school year.

Findings of the Investigation

The findings of Issue One are incorporated herein by reference.

Documentation showed that on August 5, 2022 the building administration discussed key components of working with students with IEPs with all staff. According to documentation the administrator stressed the importance of all teachers having up-to-date knowledge of IEPs, special education process, laws, and disabilities and demonstrated for all the teachers how to access student IEPs and 504 Plans through their online gradebook (Synergy) to have access to the most current IEP/504 Plans.

Documentation showed that during the beginning of the year meetings in early August, administration provided handouts to staff regarding ways to support student needs on the following topics:

- Reference Guide to Accommodations
- Modifications, Accommodations, Interventions
- Guidelines for Grading Students with Disabilities
- Possible Accommodations/Interventions/Supports for Struggling Learners
- Benefits of Inclusion
- Challenging Behaviors: Crisis Prevention
- General Considerations for Children with Special Needs
- "Accommodations and Modifications" Chart – Teachers were given this so that they would review student IEPs and document which accommodations/modifications were on each student's IEP.

Documentation showed on August 10,2022 all building staff received training on Multi-Tiered Systems of Support along with Differentiation Strategies.

Documentation showed on October 26, 2023, the School Psychologist shared "Executive Functioning Skills-The Ultimate Guide" with the Case Manager, Resource Teacher, Social Worker, and another Resource Teacher and SLP.

Documentation showed on January 11, 2023, the School Psychologist held a meeting with all five building Resource Teachers, including the student's direct service provider and case manager, to train them on Google Keep, an executive functioning tool to help students build organization skills.

Documentation showed on January 18, 2023, the parent shared and discussed the resources, ADDitude and CHADD with the student's IEP team. The Special Services Coordinator compiled these resources as well as others into a single document and provided them to the team on January 19, 2023.

Documentation showed on February 23, 2023, the Case Manager trained the student's core teachers on implementation of the student's amended IEP.

The district reported the school team met with Behavior Coach and School Psychologist Intern on April 6, 2023, to review and receive training on how to implement an "Intensive Behavior Support Plan" created for the student from teacher and staff interview and an hour of observational data.

Applicable Regulations and Conclusions

Federal law at 34 C.F.R. 300.320(a)(4) specifies that the IEP must include any services needed to support school personnel to advance appropriately toward the annual goals in the IEP.

None of the student's IEP in effect during the 2022-2023 school year specified training about how to teach students with ADHD and their unique learning needs.

Documentation showed that the school provided ongoing, student-specific training to the student's IEP team and disability-specific training to the middle school staff. Further, documentation showed that the complainant provided resources about how to teach students with ADHD and their unique learning needs that were provided to staff working with the student.

Based on the foregoing, ***it is not*** substantiated that USD #233 failed to train general education staff on how to work with the student during the 2022-2023 school year.

> ISSUE THREE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consult with ADHD learning specialists for the student's educational program during the 2022-2023 school year.

Positions of the Parties

The complainants alleged the district refused to consult with local ADHD learning specialists to support the student with his learning.

USD #233 responded that not consulting with the parent's ADHD learning specialist was not a violation of special education statute or regulation. However, the parent requested that the student's IEP team consult with her private ADHD learning specialist and the team agreed and attempted to do so. The IEP team contacted the ADHD Specialist as per parent request and scheduled a collaborative meeting time with him on a date/time offered by him. However, he failed to attend the scheduled meeting and ceased communicating with the team after the student was long-term suspended. Despite explaining to Mr. Wilson that his feedback would be helpful to the team as they completed the student's reevaluation, he never communicated with them again. The IEP

team was subsequently unable to consult with him during the completion of the re-evaluation.

Findings of the Investigation

The findings of Issue One and Two are incorporated herein by reference.

Documentation showed that the parent provided the names of local businesses with ADHD specialists to the district on September 20, 2022 and mentioned hiring them. "Here's some ADHD specialists the school can hire to help guide your staff and [student]. Matt, can you please call them?" The district reported that the parent and Special Services Coordinator spoke about the request by phone and agreed an outside ADHD specialist was not needed.

The district reported they received an email on December 1, 2022 from the parent *"Please hire an ADHD specialist with [student's] Medicaid funding to evaluate and give recommendations to your staff. Please let me know who you have selected before the end of the first semester."*

The district reported and staff notes from the December 12, 2022 IEP meeting showed, the parent requested the district use Medicaid funding for [student] to pay for an ADHD specialist to come in and present to staff. It is noted that the district responded that OT has building staff who are appropriately qualified to address the needs of students with ADHD.

Documentation from January 19, 2023 showed that the parent requested an Occupational Therapy instructional Coach to join the student's IEP team with the Special Services Coordinator explaining that this role was to support new teachers.

Documentation from staff meeting notes on February 22, 2023 noted "Parent requested an ADHD Coach by the end of the year" and staff responded, "Our resource teachers have the skills and training to support/coach the teams with the needs of students specific to the needs with ADHD."

Email from the parent on March 8, 2023 to the district staff documented the parent requesting the support of someone "ADHD Certified".

Documentation showed on March 30, 2023 the parent emailed the assistant principal stating,

"Also, I just met with Jeff Wilson, the ADHD specialist. He is able and willing to observe [the student] in school and attend IEP meetings. Please give me the necessary forms I need to sign. Thank you."

Documentation showed on March 31, 2023, the school psychologist emailed the parent's ADHD specialist, Jeffrey L. Wilson, Licensed Mental Health Counselor and provided him with a HIPPA release signed by the parent for the school to be able to share information regarding the student. In this email the school psychologist asked Mr. Wilson,
"Would you have time next week to have a phone call with myself and/or [student's] school team regarding his progress and how to build supports for him? We are currently in a special education reevaluation, and any information would be greatly appreciated."

Documentation between April 3 and April 13, 2023 showed the district and Mr. Wilson agreed to meet and attempted to schedule a time.

Documentation showed that Mr. Wilson emailed at 3:48 PM,
"My understanding is that the student we were to discuss is no longer a student at the [middle school]. If I'm mistaken, let me know." To which the school psychologist replied "[The student] is still technically enrolled at [the middle school]. Although he has been suspended from the building, we are still responsible for his special education reevaluation, which your collaboration would help with! Does this help?"
The district reported that Mr. Wilson never replied to this email or communicated with the school again subsequent to the April 14th email from the school psychologist.

The district reported,

> After obtaining Parent's consent on a HIPPA release, the Assistant Principal and School Psychologist left several voice mail messages for Mr. Wilson and asked him to return their call. On the afternoon of April 13th, 2023, Mr. Wilson called back the Assistant Principal and told her that his understanding was that [student] had been suspended from school and said that he may not be able to talk to them anymore. The Assistant Principal explained that even though the student was suspended, he was still enrolled at [middle school] and the team was asking for his information regarding the evaluation and strategies for working with the student. She reiterated that the school had a HIPPA release signed for them to communicate with him. Mr. Wilson replied that he would like to double check that with Mom. Mr. Wilson told the Assistant Principal that he

would get ahold of Mom and if he was allowed to talk to them he would call back. Mr. Wilson never called back.

The May 25, 2023 PWN documented:

> In [student's] IEP amendment meeting on December 12, 2022, [student's] mother requested that the district provide an ADHD coach/specialist to address [student's] special education needs. The school team considered the request for an ADHD coach/specialist; however, rejected this proposal as [student's] IEP team and teachers have the necessary expertise with regard to ADHD and are highly qualified to provide [student] his special education services per the Kansas State Department of Education.
>
> In another IEP amendment meeting on February 22, 2023 [student's] mother requested that the district provide an ADHD coach/specialist for [student] and train teachers on ADHD by August 2023. The school team fully considered this request, however, rejected this proposal as the service providers on [student's] team already have the necessary experience and knowledge necessary to meet [student's] ADHD related needs.

Documentation from the Olathe Staff Counsel on May 30, 2023 stated,

> 3. The IEP team did not adopt Parent's proposal to add an ADHD specialist/coach to the team for the following reasons. The service providers on [student's] IEP team are appropriately licensed by the Kansas State Department of Education to implement [student's] IEP and special education services. [student's] IEP team included individuals with expertise in ADHD such as a district behavior coach, school psychologist, school counselor, school nurse, and student's resource teacher. The Kansas State Department of Education does not offer teacher endorsement in "ADHD Specialist." [Student's] IEP team members and service providers have the necessary experience and qualifications to meet his needs related to ADHD.
>
> 4. There is no data to support that not having an ADHD specialist/coach on [student's] team negatively impacted his school performance. [Student's] attendance from [school] from the beginning of the school year through April 13th indicated that he missed a minimum of 25 class periods of instruction in each of his classes and missed his first hour class 32 times. Despite his attendance, progress monitoring of [student's] IEP goals from [school] indicates

that [student] made progress toward his IEP goals through the end of the 3rd quarter this school year. In addition, [student] passed all his general education classes with no grade lower than a C- through the end of the 3rd quarter. During the 4th quarter of the school year, [student] was long-term suspended and enrolled in Project HOPE on 4/24/2023. While in his disciplinary placement at Project HOPE, Parent declined for [student] to attend the available in-person learning and he never participated in the available daily virtual learning. Given [student's] unavailability for direct instruction while in his disciplinary placement, he still passed his English and social studies classes with grades of C by completing packets of work independently at home.

5. parent fully consented to [student's] current IEP dated 5/1/12023, that does not include services from an "ADHD Specialist".

Applicable Regulations and Conclusions

According to federal regulations at 34 CFR § 300.503(a)(2) and K.S.A 72-3430(b)(2) a procedural safeguard afforded to parents is the Prior Written Notice for certain proposed special education actions. The Prior Written Notice documents a description of the action proposed or refused by the district. It is required when the district proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless of whether it is the school or the parent who is initiating the request.

Issue five investigated the parent's request for an ADHD specialist on behalf of her student who received special education services during the 2022-2023 school year. It is found that the parent made this request throughout the school year via email, during phone conversations with district staff and in student IEP team meetings. The earliest documented request for an ADHD specialist was in a September 20, 2022 email. The parent made this request again December 12, 2022 during the IEP meeting. The district subsequently attempted to consult with an ADHD specialist requested by the parent and later the district refused this request in a PWN May 25, 2023.

In this case it is determined that procedurally, a Prior Written Notice should have been issued in response to this request as accepting or refusing the request for an ADHD specialist early in the school year when the first request was made. It is determined that a PWN needed to be written for the parent request for an ADHD specialist because this action may impact the services and/or related services of the student.

It is acknowledged that the district had no obligation to consult with the ADHD specialist, however it agreed to consult with an ADHD specialist recommended by the parent in March 2023 and made many attempts to include this specialist in the reevaluation. This effort was however, made months after the initial request.

Based on the foregoing, ***it is*** substantiated that USD #233 failed to respond to the parent in regard to her request for an ADHD learning specialist to consult for the student's educational program during the 2022-2023 school year.

> ISSUE FOUR: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to use Medicaid funding to provide support for academic learning during the 2022-2023 school year.

Positions of the Parties

The complainants alleged the student is eligible for Medicaid and that funding has not been used to provide support for him.

USD #233 responded that the district followed the Kansas State Department of Education guidance on how and when Medicaid funds can be used and claimed. *During the 2022-2023 school year, the student was Medicaid eligible, but his IEP did not include any services that would qualify for Medicaid reimbursement. His IEP did not include specialized transportation, nursing services, occupational therapy, physical therapy, speech language and hearing services, psychology, or social work services. As a result, the District did not claim or receive any Medicaid funding for the student during the 2022-2023 school year. Parent's signature on the Medicaid consent form did not result in funding for the District and was only giving the District permission to bill for Medicaid reimbursement if the student has any eligible services on their IEP, which this student does not. Even if the District had received Medicaid funding for the student, that funding was reimbursement for services already provided by the district in accordance with the student's IEP.*

Findings of the Investigation

The findings of Issue One, Two, and Three are incorporated herein by reference.

Documentation showed that the parent signed consent April 11, 2022 on the Medicaid Statement for the IEP dated April 11, 2022.

Documentation showed that the parent signed consent December 12, 2022 on the Medicaid Statement for the IEP dated December 12, 2022.

Documentation showed that the parent signed consent April 19, 2023 on the Medicaid Statement for the IEP dated April 10, 2023.

Documentation showed that the parent signed consent April 20, 2023 on the Medicaid Statement for the IEP dated April 20, 2023.

Documentation showed that the parent signed consent May 4, 2023 on the Medicaid Statement for the IEP dated May 1, 2023.

Documentation showed the following services listed in the IEPs in effect during the 2022-2023 school year.

Service	April 11, 2022	December 12, 2022	March 1, 2023	April 10, 2023	April 20, 2023	May 1, 2023
Specialized Transportation	No	No	No	No	No	No
Nursing Services	No	No	No	No	No	No
Occupational Therapy	No	No	No	No	No	No
Physical Therapy	No	No	No	No	No	No
Speech Language and Hearing Services	No	No	No	No	No	No
Psychology	No	No	No	No	No	No
Social Work Services	No	No	No	No	No	No

Applicable Regulations and Conclusions

According to regulations at 34 C.F.R. 300.154(d)(2)(iv) and (d)(2)(v)) schools must obtain parental consent prior to accessing Medicaid for the first time. Further, written notification that complies with 34 C.F.R. 300.154(d)(2)(v)(A) through (D) must be provided both prior to accessing Medicaid for the first time and annually thereafter. The written notification provided annually must specify the following four things:

1) the personally identifiable information that may be disclosed to Medicaid in order to bill for special education and related services under IDEA;
2) that the parent understands and agrees that the school may access Medicaid to pay for allowable special education and related services under IDEA;
3) a statement of the "no cost" provisions of 34 C.F.R. 300.154(d)(2)(i) through (iii); and

4) that the parents' withdrawal of consent or refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents

The KSDE Fact Sheet for School Based Medicaid in Kansas, revised April 2019 details how and when Medicaid funds can be claimed.

> Services covered under Kansas State Plan Amendment include specialized transportation (only cost based reconciliation), nursing services, occupational therapy, physical therapy, speech language and hearing services, psychology, and social work services…school agencies receive periodic "interim" payments during the school year from the state Medicaid agency. These interim payments reimburse the school agency for providing the required school Medicaid services…A school district can receive reimbursement for every Medicaid eligible service that is documented on the IEP or IFSP to support the education of a Medicaid eligible student.

Based on the foregoing, ***it is not*** substantiated that USD #233 failed to use Medicaid funding to provide support for academic learning during the 2022-2023 school year.

> ISSUE FIVE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP, specifically providing the supports, interventions, discipline in regard to following direction and accommodations for academic learning listed in the student's IEP during the 2022-2023 school year.

Positions of the Parties

The complainants alleged the district rarely accommodated the student's assignments according to his IEP, instead just told him to be more independent and that he should receive the "natural consequences" of not completing his work. She further alleged that they reprimanded him in front of others for not following directions and received daily negative marks and a conduct card for not following directions, threatening him to be removed from the classroom and be placed in the In-School suspension room. She stated that by spring he began to shut down at school and then avoid school altogether. Once he received a long-term suspension the services that he was offered were wholly unacceptable and ended up not having him participate in services during the long-term placement nor receive special education services.

USD #233 responded that the student's special education services were delivered and the IEP implemented during the 2022 through 2023 school year. Further, services were made available to him in his disciplinary placement at Project Hope during his long-term suspension from April 20th through the end of the 2022-2023 school year however the parent elected for the student not to access those services or any other direct instruction. During the intake meeting with staff at Project Hope, the parent changed her mind and indicated that the student would not be participating in virtual special or general education instruction offered and that she only wanted work packets for the student to complete at home.

Findings of the Investigation

The findings of Issue One, Two, Three, and Four are incorporated herein by reference.

Documentation showed six IEPs were in effect during the 2022-2023 school year and the following services and accommodations in place in the IEPs.

Date	Service minutes	Evidence	Goals	Progress reports	Accommodations	evidence
April 11, 2022	50 minutes, 1 day/week	District report, progress reports	1 goal	Quarter 4 progress report 100%	Six listed	Student Planner, examples of accommodated work
December 12, 2022	50 minutes, 5 day/week	District report, progress reports	1 goal	Quarters 1 & 2 progress report, goal met	Six listed	Accommodations spreadsheet
March 1, 2023	50 minutes, 5 day/week	District report, progress reports	1 goal	Quarter 3 progress report, goal met	Sixteen listed	End of week communications, examples of accommodated work
April 10, 2023	50 minutes, 5 day/week	Suspension and then declined services	1 goal	Suspension and then declined services	Sixteen listed	Suspension and then declined services
April 20, 2023 - suspension	15 minutes 1 day/week	declined services	1 goal	declined services	Nine listed (4/20/23 PWN)	declined services
May 1, 2023 suspension	15 minutes 1 day/week	declined services	2 goals	declined services	Nine listed (4/20/23 PWN)	declined services

Documentation showed the purpose and directions for the student's point sheet dated on or about September 2022. The parent reported that the student was informed of this point sheet prior to getting approval from the parent. The parent reported after receiving notification of this documentation she stated she would not consent to his using it. The parent and district agree that the point sheet was not implemented.

The district reported these cards were part of a 7th grade behavior program. The parent reported she requested the cards not be used with the student, but they continued to be used for a period of time thereafter. The parent reported that this type of behavior correction contributed to the student increasing absenteeism. Documentation showed that the student used a Student Behavior Card Conduct Correction Card from January 26, 2023 – February 2, 2023.

Documentation showed that the parent was contacted that the student would serve a detention February 1, 2023 for 15 minutes as a consequence for losing his Conduct card and the parent replied that losing things is a part of his disability.

Applicable Regulations and Conclusions

According to Federal Regulations at 34 C.F.R. 300.323(c)(2) 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 and State Regulations at (K.A.R. 91-40-16(b)(2) further define implementation as "once the IEP has been developed services are to be initiated within 10 school days after written parent consent is granted."

In this case there were six IEPs or IEP amendments in effect during the 2022-2023 school year. It was found in Issue two that IEP team members were provided and trained to work with the student's IEP plan. Further, it is found that evidence supported that the district delivered the services minutes, implemented the goals, and used the accommodations according to the IEPs in effect at the time.

Although the complainant had concerns about the specificity of the goals and quality of the instruction It is not the role of the Complaint Investigator to supersede the role of the IEP team and investigate the specifics, quality or quantity of the services, goals, or accommodations, only if the IEP was implemented during the 2022-2023 school year.

Based on the foregoing, it is not substantiated that USD #233 failed to follow the IEP, specifically providing the supports, interventions, discipline in regard to following

direction and accommodations for academic learning listed in the student's IEP during the 2022-2023 school year.

> ISSUE SIX: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate individualized education plan (IEP) based upon reevaluation during the 2022-2023 school year.

Positions of the Parties

The complainants stated that they requested a new evaluation to gain a better understanding of how the student's ADHD impacts his learning. The complainants alleged that the evaluation that was conducted showed he had difficulty with following direction and executive functioning problems, but the IEP didn't address those things. She further stated that his current IEP goals are too vague and there are no goals or interventions for when the student puts his head on his desk or when he seems confused but does not ask for help.

USD #233 responded that despite student absences data were collected for each area identified in the Prior Written Notice to Consent to Evaluation with the exception of sensory needs due to the failure of the parent making the student available for evaluation. The district reported that they relied on sensory evaluation collected during the 2021-2022 school year. Each of the identified areas were addressed in the Evaluation Report. Parent fully participated in each step of the process and her input was included in the Evaluation Report and IEP.

Findings of the Investigation

The findings of Issue One, Two, Three, Four, and Five are incorporated herein by reference.

Documentation showed the parent requested a reevaluation to learn how his ADHD impacted his education. A January 26, 2023 Prior Written Notice for Consent for Evaluation or Reevaluation and Request for Consent proposed to conduct the reevaluation for Health/Motor Ability (specifically sensory needs), Vision, Hearing, Social/Emotional Status/Behavioral Status, and Academic Performance. Consent for the reevaluation was signed by the parent on January 29, 2023. The district reported May 1,

2023 as the date targeted to complete the evaluation and May 8, 2023 as the 60 school-day time limit for the reevaluation.

Documentation showed that on March 31, 2023 the parent requested the reevaluation be amended to include sensory needs and acceptance of that request by the district.

Attendance records showed the student missed 27 full days of school and an additional 6 half-days of school, equaling 50% of the school days available to the team to conduct the reevaluation.

The table below shows the evaluation findings and how the evaluation is reflected in the May 1, 2023 IEP.

Evaluation Area requested January 26, 2023 PWN	Type of evaluation	Evaluation Report Findings dated May 1, 2023	Addressed May 1, 2023 IEP
Health/Motor Ability - Sensory needs (Added 3/31/2023)	• Observation	• Evaluation Report: pg 10 • Sensory Needs Observation by OT not completed due to absence on all days scheduled	• Summary of findings IEP – pg 11 • Accommodation – movement in classroom; sensory breaks
Vision	• 10/27/2022	• Evaluation Report pg 3; Pass	• Summary of findings IEP – pg 5
Hearing	• 1/26/2023	• Evaluation Report pg 3; Pass	• Summary of findings IEP – pg 5
Social/Emotional Status/Behavioral Status	• Behavior Rating Inventory of Executive Functioning, 2nd Edition (BRIEF–2) • FBA	• Evaluation Report - pgs 10-13 • BRIEF-2 inability to resist impulses; adjust to changes in environment; problem solving; working memory; organization; emotional control; initiating tasks • Functional Behavior Assessment Plan with 3 target behaviors	• Behavior Intervention Plan, 5/1/2023 • Goal 1. Follow instruction; • Goal 2. Summarize task, initiate task and complete • Goal 3. Initiate task (added in PWN) • Service minutes • Accommodations – alternate work settings, store non homework assignments, preteach/reteach, extra cues/prompts, chunking, planner, preferential seating, sensory breaks, movement, frequent checks for understanding

Evaluation Area requested January 26, 2023 PWN	Type of evaluation	Evaluation Report Findings dated May 1, 2023	Addressed May 1, 2023 IEP
Academic Performance	• Wechsler Individual Achievement Test 4th Edition (WIAT-4) • Winter 2022-2023 FAST ™	• Evaluation Report pgs 9-10 • Reading 1) Words - Average and 2) Comprehension - Average • Mathematics 1) Problem Solving - Low Average and 2) Numerical Operations - not completed due to low energy to stay awake	• No specific reading or mathematics Goals are included. • Service minutes • Accommodations: preteach/ reteach, chunking, reduce assignments, extra cues, prompts, copy of notes, extended time, frequent checks for understanding

The district reported that observational data were not collected for the sensory needs evaluation as the evaluation was added March 31, 2023 and the student was long-term suspended on April 6, 2023. The district reported that they requested the parent provide the student for additional time to complete the observational evaluation, but the parent did not provide the child.

The district reported that since the student was not available for the sensory assessment observations data from the previous April 11, 2022 reevaluation was used as the existing data review.

The district further reported that only one hour of observational evaluation was collected for the Functional Behavior Assessment due to absences and long-term suspension. Again, the district reported that they requested the parent provide the student for additional time to complete the observational evaluation, but the parent did not provide the child.

The Functional Behavior Assessment dated May 1, 202;"identified the following target behaviors 1) refusal to follow adult's direction (completing expected task); 2) displaying disrespect toward peers and adults (saying "go away"; 3) not engaging in the classroom direction (sleeping, laying head on desk). It is hypothesized the function of the target behaviors are avoiding work. It is noted the parent indicated, "the school's negative reinforcement system caused the student to refuse to go to school."

The district reported

> The team had to wrap up the FBA as they were near the end of their time to collect data. To conduct an FBA, the team needed 8-10 hours of data, in at least a two week window, to provide data driven results. Due to the student's excessive absenteeism, the team was only able to collect one hour of data, which was not

> sufficient to support the addition of a Behavior Intervention Plan to the student's IEP. Instead, on April 6th, the team met with the behavior coach who created an (sic) "Intensive Behavior Support Plan," which is a general education intervention. Information to support this general education intervention was gathered from conversations with teacher and other staff who knew the student, along with the hour of data that was collected during their observation.

The BRIEF-2 identified deficits in executive functioning skills, specifically resisting impulses, adjusting to changes in the environment, problem-solving, working memory, organization, emotional control, and initiating tasks.

The Winter 2022-2023 FAST TM Family Report indicated the student was at some risk for CBMreading English, eReading and AUTOreading. The report stated he may need additional support to improve accuracy and automaticity in reading, improved phonemic awareness, phonics and vocabulary skills and overall reading scores. The report further reported the student is at high risk in CBMmath Automaticity, meaning he needs additional support to improve math fact knowledge and some risk in eMath meaning he may need additional support to improve mathematics skills.

Documentation showed that the IEP team met on 5/1/2023 to discuss the Reevaluation report and amend Student's 4/10/2023 annual IEP as needed. Based on the reevaluation, the team added an IEP goal for initiating tasks.

Documentation showed that the district identified three areas of evaluation that may have been impacted by the student's absenteeism and long-term suspension: 1) functional behavior assessment observation; 2) sensory assessment; and 3) Numerical Operations of the WIAT-4.

The district reported that due to lack of student attendance during the spring 2023 if the parent requested additional sensory and behavior evaluation the district would issue an appropriate Prior Written Notice to obtain her consent.

After the meeting, Parent signed indicating she agreed with the results of the Reevaluation and signed fully consenting to the amended IEP developed by the team with her participation. The parent reported during interview with the complaint investigator that she did not agree with the findings, but "...felt pressured by the school district and pressured, because he needed a current IEP...."

The parent reported during interview and in an email with the complaint investigator that the district should have additionally evaluated for a learning disability, dyslexia or dysgraphia and been evaluated by a speech and language therapist for receptive language and processing auditory instruction and that they are also trained in executive functioning.

Applicable Regulations and Conclusions

Issue six investigated if the IEP team developed an appropriate IEP on May 1, 2023 based upon reevaluation consented to by the parent on January 20, 2023. According to K.S.A. at 72-3429(d)(2) the IEP team must address all of the special education and related service needs of the child including results of the most recent reevaluation .

It is found that the evaluation plan was agreed upon based on the purpose of the reevaluation and followed. The district acknowledged that three areas may have been impacted by the student not being available for observation and the student behavior during one mathematics subtest. The district has offered to collect additional observation data and consider the findings if the parent makes the request.

It is further found that service minutes, goals or accommodations were included in the IEP that correspond to the needs identified in the May 1, 2023 reevaluation report. The parent stated she did not feel the goals were specific or directly addressed the targeted behaviors (putting head down on desk). The May 1, 2023 IEP was signed by all IEP team members, including the parent. It is not the role of the Complaint Investigator to supersede the role of the IEP team and investigate the specifics, quality or quantity of the services, goals, or accommodations only if the needs of the evaluation are addressed by the IEP team in the May 1, 2023 meeting.

It is noted that the parent stated on June 23, 2023 that she felt pressured by the IEP school team members to agree to the May 1, 2023 IEP and stated she thought additional areas of evaluation should have been recommended by the district. This issue was not made as part of the initial part of the May 25, 2023 complaint and was not investigated.

Based on the foregoing, ***it is not*** substantiated that USD #233 failed to develop an appropriate education based upon reevaluation during the 2022-2023 school year.

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 regulations at 34 CFR § 300.503(a)(2) specify that a Prior Written Notice is to be provided to parents for certain proposed special education actions.

   In this case, the evidence supports the finding that USD #233 did not provide a Prior Written Notice either consenting to or refusing to consult with an ADHD specialist in response to parent request. Documentation and interview shows this. It is noted that the district later attempted to consult with an ADHD specialist recommended by the parent.

Based on the foregoing, USD #233 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #233 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will comply with state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at Federal regulations at 34 CFR § 300.503(a)(2) and State regulations at K.S.A 72-3430(b)(2) by ensuring that Prior Written Notices are written to ensure parents are always well informed about whatever action the district intends to take (or intends not to take) on behalf of their child.

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 of 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, 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)

23FC55 Appeal Review

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 233
Olathe Public Schools: 23FC233-003

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on May 25, 2023, by ----------, on behalf of their son, ----------. In the remainder of this decision, ---------- 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 July 1, 2023. That Complaint Report concluded that there was one violation of special education statutes and regulations

Thereafter, both the school district and 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 parents, the Complaint Report, the parent's notice of appeal, the district's notice of appeal and the written responses of the parents and the district to the 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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

We begin with the parent's appeal:

DISCUSSION OF ISSUES ON APPEAL FROM PARENTS

ISSUE ONE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide qualified staff for the student during the 2022-2023 school year.

The parents appeal the findings and conclusions regarding this issue saying, "no one with specific training regarding ADHD/Executive Functioning assisted the student, or trained staff." The parents provide no evidence to support this assertion.

The complaint report included a detailed list of twenty-two service providers serving on the six IEP teams of this student over the past school-year, including one social worker, one behavior coach, three school psychologists, one behavior coach, two school counselors, two case managers, a special education coordinator, a nurse, eight general education teachers, and a resource teacher, who assisted the student during the past year, along with their position and licensure status. The report included a finding that "all of the education and related services personnel who were listed on the IEPs as providing services to the student possess the necessary qualifications and hold current licenses or certifications to serve in their respective roles." In this appeal, the parents do not challenge this finding. Instead, the parents simply state that "USD #233 failed to provide (the student) with ADHD/Executive Functioning Interventions from staff qualified to provide those services." The parents do not state why they believe the USD #233 licensed and certified staff are not qualified to provide these services.

When a complainant believes licensed and certified staff are not sufficiently trained to serve their child, the parents should request that the IEP be amended to specify specific additional training. When that occurs, the IEP team makes the decision as to whether additional support for school personnel are necessary, and, if so, amends the IEP to specify the necessary additional supports. In this case, this student's IEP does not require any additional staff training for this student. Absent such provision in an IEP, school districts have the sole discretion to assign certified or licensed staff, and are not required to replace personnel with someone who the parents believe to be better qualified (See, Slama by Slama v. Independent School District No. 2580, 39 IDELR 3 (D. Minn. 2003).

As indicated above, in the "Preliminary Matters" portion of this decision, Kansas Administrative Regulation, K.A.R. 91-40-51(f), which was attached to the Complaint Report that was sent to both parties, states 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."

The Appeal Committee finds that the parents appeal does not provide a detailed statement of the basis for alleging that the report is incorrect. Further, the Appeal Committee finds that the report includes sufficient facts regarding the licensing and certification of school personnel serving this student to support the conclusions on this issue. Accordingly, the Committee sustains the report on this issue.

> ISSUE TWO: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to train general education staff on how to work with the student during the 2022-2023 school year.

In this appeal, the parents state:

It was not until January 2023, that (the student's) IEP team received specific education on ADHD/EFD with the direction of parents on where to obtain information. (The student) was significantly struggling within the first month of school (August/September 2022), and teachers were not following IEP accommodations."

As an initial matter on this issue, the assertion that "teachers were not following IEP accommodations" is not a part of ISSUE TWO in the report. It is a part of ISSUE FIVE in the report, and will be addressed by the Appeal Committee in ISSUE FIVE of this appeal.

The parent's appeal on this issue suffers from the same lack of a detailed statement of the basis for alleging the report is incorrect that appeared in Issue One. The Appeal Committee finds nothing in the appeal of this issue to serve as a basis for alleging that the report is incorrect.

The report provides a comprehensive description of documented staff training activities, including information handouts, meetings, training sessions, and also resources provided by the parents which were provided to the IEP team. These activities ranged, in time, from August 2023 through April of 2023. Included in these training activities is the statement on page 12 of the report, that "on January 11, 2023, the school psychologist held a meeting with all five building resource teachers, including the student's direct service provider and case manager, to train them on Google Keep, an executive functioning tool to help students build organization skills."

In its response to the appeal, the district adds the following pertinent information:

> Regardless, general and special education staff at Oregon Trail Middle School received training for how to work with the student through a variety of opportunities and formats during the 2022-2023 school year.

On Friday, August 5, 2022, building administration delivered their beginning of the year presentation to all staff. In this presentation, they specifically discussed key components of working with students with IEPs. The presentation stressed the importance of all teachers having up-to-date knowledge of IEPs, special education process, laws, and disabilities. This presentation was followed by specifics as they pertained to Oregon Trail Middle School. The administrators demonstrated for all the teachers how they can access students' IEPs and 504 Plans through their online gradebook (Synergy) at any moment. This is essential as it allows all general educations teachers to always have access to the most recent IEP/504 Plans.

During the beginning of the year meetings in early August, administration provided handouts to staff regarding ways to support student needs. The documents that were distributed this year were:

- Reference Guide to Accommodations
- Modifications, Accommodations, Interventions
- Guidelines for Grading Students with Disabilities
- Possible Accommodations/Interventions/Supports for Struggling Learners
- Benefits of Inclusion
- Challenging Behaviors: Crisis Prevention
- General Considerations for Children with Special Needs
- "Accommodations and Modifications" Chart – Teachers are given this so that they can review student IEPs and document which accommodations/modifications are on each student's IEP.

On August 10th, building staff received training on Multi-Tiered Systems of Support along with Differentiation Strategies.

Additional training specific to Student's IEP and disability related needs occurred as follows:

- On October 26, 2023, the School Psychologist shared "Executive Functioning Skills-The Ultimate Guide" with the Case Manager, Resource Teacher, Social Worker, and another Resource Teacher and SLP.
- On January 11, 2023, the School Psychologist held a meeting with all five building Resource Teachers, including Student's direct service provider and case manager, to train them on Google Keep, an executive functioning tool to help Students build organization skills.
- · On January 18, 2023, Parent came to Oregon Trail to discuss some resources that she wanted to share with the team. She stated that "ADDitude" and "CHADD" were both great sources which contained helpful information for supporting students with ADHD. Matt Kunstman, Special Services Coordinator, reviewed the

websites and compiled some links into a single document that would be beneficial for educators to easily access. He shared that document with Oregon Trail the Asst. Principal, School Psychologist, and Case Manager on January 19, 2023.

- On February 23, 2023, the Case Manager trained Student's core teachers on implementation of Student's amended IEP.
- On April 6, 2023, the Behavior Coach and School Psychologist Intern trained the staff on Student's IEP team on implementation of Student's Intensive Behavior Support Plan.

Multiple training opportunities were provided both to all staff and the staff on Student's team with regard to meeting Student's needs and the needs of all students with disabilities at Oregon Trail Middle School.

Further, training on meeting the needs of students with ADHD and executive functioning deficits is included in most teacher preparation programs. ADHD and executive functioning needs are common disabilities and District staff address these needs for students on a routine basis. It is the District's opinion that the staff on Student's IEP team already had the expertise, training, and experience necessary to meet these needs and implement Student's IEP without additional training. Additional training was not necessary and therefore not part of Student's IEP.

The Appeal Committee also notes that this student's IEP does not require any additional training support for school personnel. The significant training activities cited in the report, and in the district's response to the parent's appeal were completed in addition to any IEP requirement.

The Appeal Committee sustains the report on this issue.

ISSUE FOUR: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to use Medicaid funding to provide support for academic learning during the 2022-2023 school year.

In their appeal, the parents state that it is their understanding that "Medicaid funds are not simply reimbursement for current staff salaries, but for any additional services (the student) may require given he is 'at risk' due to adoption from foster care."

That may be a correct statement, but it is not relevant to this appeal. On page 18 of the report, USD #233 reported that, although the student was Medicaid eligible, his IEP did not include any services that would qualify for Medicaid reimbursement. Accordingly, the district did not claim or receive any Medicaid funding for the student during the 2022-2023 school-year.

Although, the report did not make a specific finding on this issue, the Appeal Committee notes that nothing in special education regulations requires the district to access Medicare funds, even when a child is eligible for such funds and receives services funded through Medicare. The pertinent federal regulation, 34 C.F.R. 154(d)(1), states only that school districts "may" use Medicaid funds, under certain conditions – including parent consent – but nowhere requires districts to do so. Thus, even for children with disabilities who are Medicaid eligible, who receive Medicare related services through their IEP, and whose parents have given consent to the school to use Medicaid funding, this regulation does not obligate the school district to access such funding. In short, failure to access Medicaid funding for any reason is not a violation of special education laws and regulations.

The Appeal Committee sustains the report on this issue.

> ISSUE FIVE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow the IEP, specifically providing the supports, interventions, discipline in regard to following direction and accommodations for academic learning listed in the student's IEP during the 2022-2023 school year.

In their appeal of this issue, the parents state, "We provided dozens of documents detailing the lack of accommodations during the 2022-2023 school year. We can provide dozens more."

The parent's appeal on this issue suffers from the same lack of a detailed statement of the basis for alleging the report is incorrect as in the appeal of Issues one and two. There is no "detail" in the appeal of this issue that the Appeal Committee can use to overturn the conclusion of the investigator.

On the other hand, in its response to the parent's appeal, the district provided a detailed statement, saying: "During the school year, Parent alleged that IEP accommodations were not being provided at school. In response, an Excel spreadsheet was developed by the building School Psychologist to assist staff in documenting accommodations being provided to Student during the second semester. This spreadsheet was shared with Parent and she could view it at any time. Later, Parent told school staff that she didn't have time to look at the spreadsheet and requested that she instead be emailed a weekly summary, which the Resource teacher did. Parent has not presented any documentation to the District that accommodations are not being provided."

Nor have the parents provided any such documentation to the Appeal Committee that accommodations are not being provided.

The Appeal Committee sustains the report on this issue.

ISSUE SIX: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to develop an appropriate individualized education plan (IEP) based upon reevaluation during the 2022-2023 school year.

In their appeal, the parents provide a one-sentence appeal, that states: "(The student's) IEP did not include Executive Functioning Interventions and an ADHD specialist, which was requested numerous times by parents." This statement does not address the findings and conclusion of the investigator, much less provide the "detailed statement of the basis for alleging that the report is incorrect" that is required by the state regulation allowing for an appeal of a complaint report.

Nothing in the parent's "one-sentence" appeal convinces the Appeal Committee that the investigator's conclusion on this issue is in error.

On page 24 of the report, the investigator states: "Attendance records showed the student missed 27 full days of school and an additional 6 half-days of school, equaling 50% of the school days available to the team to conduct the reevaluation." On page 27, the report says: "After the meeting, Parent signed indicating she agreed with the results of the Reevaluation and signed fully consenting to the amended IEP developed by the team with her participation. The parent reported during interview with the complaint investigator that she did not agree with the findings, but "felt pressured by the school district and pressured, because he needed a current IEP…" The Appeal Committee recognizes that the parent may have felt "pressured" to consent to the amended IEP, but the written consent was provided. No "detailed statement of the basis for alleging the report is incorrect" with regard to this issue was presented to this appeal committee.

The Appeal Committee sustains the report on this issue.

DISCUSSION OF ISSUE ON APPEAL FROM SCHOOL DISTRICT

ISSUE THREE: The USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to consult with ADHD learning specialists for the student's educational program during the 2022-2023 school year.

In this issue, the report concluded, not that the district failed to consult with ADHD learning specialists, but that when the district refused to do so, it failed to provide the parents with a prior written notice (PWN) of that refusal.

This issue involves federal regulations, at 34 C.F.R. 300.503(a) and Kansas statutes, at K.S.A. 72-3430, which require school districts to provide a PWN whenever the district "Proposes to initiate or change, or refuses 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."

A Free Appropriate Public Education, or FAPE, is a term with a broad definition, framed most recently by the United States Supreme Court. In Endrew F. v. Douglas County School District, 137 S.Ct. 988 (2017), the Supreme Court said that the term "Free Appropriate Public Education" means; "an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." With this definition, the term FAPE is broadly associated with any matter related to the progress of a child with a disability in school. The Appeal Committee will use this definition when assessing whether a proposed change to, or the refusal of a parents request to change, an IEP is a matter of FAPE, requiring a PWN.

The district cites comments made by the investigator in the corrective action portion of the report, saying: "Prior Written Notices are written to ensure parents are always well informed about whatever action the district intends to take (or intends not to take) on behalf of their child, " and says such statement is "legally inaccurate."

The Appeal Committee agrees that the use of the term "whatever" is legally inaccurate, but also finds that this statement was made in the corrective action portion of the report as a general comment, presumably for clarification, and not as a basis for the conclusion in Issue 3.

The district argues that there is no legal requirement that a PWN be issued "whenever a school attempts to communicate with [subsequent to a signed release of information] a student's private therapist, doctor, or any other private specialist or service provider," or "whenever a parent asks a Kansas school to contact/consult with a child's private therapist, doctor, or any other private specialist or service provider." The Appeal Committee will not comment on these arguments as it has determined that this is not a full description of the requests made by these parents.

The report documents the following parent requests (See Report, page 14):

- September 20, 2022, "Here's some ADHD specialists the school can hire to help guide your staff and [student]. Matt, can you please call them?" The district reported that the parent and Special Services Coordinator spoke about the request by phone and agreed an outside ADHD specialist was not needed.
- *The district reported they received an email on December 1, 2022 from the parent stating: "Please hire an ADHD specialist with [student's] Medicaid funding to evaluate and give recommendations to your staff. Please let me know who you have selected before the end of the first semester."*

- The district reported and staff notes from the December 12, 2022 IEP meeting showed, the parent requested the district use Medicaid funding for [student] to pay for an ADHD specialist to come in and present to staff. It is noted that the district responded that OT has building staff who are appropriately qualified to address the needs of students with ADHD.
- Documentation from January 19, 2023 showed that the parent requested an Occupational Therapy instructional Coach to join the student's IEP team with the Special Services Coordinator explaining that this role was to support new teachers.
- Documentation from staff meeting notes on February 22, 2023 noted "Parent requested an ADHD Coach by the end of the year" and staff responded, "Our resource teachers have the skills and training to support/coach the teams with the needs of students specific to the needs with ADHD."
- Email from the parent on March 8, 2023 to the district staff documented the parent requesting the support of someone "ADHD Certified".
- Documentation showed on March 30, 2023 the parent emailed the assistant principal stating, *"Also, I just met with Jeff Wilson, the ADHD specialist. He is able and willing to observe [the student] in school and attend IEP meetings. Please give me the necessary forms I need to sign. Thank you."*

The Appeal Committee considers these parent requests to be more than what the district describes to be merely a school's attempt "to communicate with _____ a student's private therapist, doctor, or any other private specialist or service provider," or a parent asking "a Kansas school to contact/consult with a child's private therapist, doctor, or any other private specialist or service provider." The Appeal Committee views these requests from the parents to be a request for help related to this student's educational progress, or put another way, help related to this student's Free Appropriate Public Education (FAPE).

On page 16, the report documents a May 25, 2023 PWN. That PWN stated that, on December 12, 2022 (actually 2023) the student's mother:

"requested that the district provide an ADHD coach/specialist to address [student's] special education needs." That PWN went on to say, "The school team considered the request for an ADHD coach/specialist; however, rejected this proposal as [student's] IEP team and teachers have the necessary expertise with regard to ADHD and are highly qualified to provide [student] his special education services per the Kansas State Department of Education." This request is clearly related to the child's progress in school, and so, is related to FAPE. This response in the May 25, 2023 PWN should have been provided in a PWN in December, 2023, when the team considered and rejected this request.

The May 25, 2023 PWN also stated:

"In another IEP amendment meeting on February 22, 2023 [student's] mother requested that the district provide an ADHD coach/specialist for [student] and train teachers on ADHD by August 2023. The school team fully considered this request, however, rejected this proposal as the service providers on [student's] team already have the necessary experience and knowledge necessary to meet [student's] ADHD related needs." This information is also clearly related to the child's progress, and so to FAPE, and this information should have been provided to the parents in a PWN in February 2023, when the team considered and rejected this request.

The report, on page 16, added that documentation from the district on May 30, 2023, said:

"3. The IEP team did not adopt Parent's proposal to add an ADHD specialist/coach to the team for the following reasons. The service providers on [student's] IEP team are appropriately licensed by the Kansas State Department of Education to implement [student's] IEP and special education services. [student's] IEP team included individuals with expertise in ADHD such as a district behavior coach, school psychologist, school counselor, school nurse, and student's resource teacher. The Kansas State Department of Education does not offer teacher endorsement in "ADHD Specialist." [Student's] IEP team members and service providers have the necessary experience and qualifications to meet his needs related to ADHD."

The Appeal Committee, again, sees this request to add an ADHD specialist/coach to the IEP team to be clearly related to the student's progress, and so to FAPE. Of course, the parents could have invited such a specialist/coach to attend IEP meetings on their own, as the district suggests, but that is not what the parents wanted. They wanted, and asked for, the district to add the specialist to the team. The team rejected this request for the reasons stated above, but that rejection and explanation for why rejected needed to be provided on a PWN at the time the IEP team rejected the request.

For the reasons stated above, the Appeal Committee sustains the conclusions of the complaint investigator on this issue.

CONCLUSION

The Appeal Committee concludes that there is sufficient evidence to support the findings and conclusions of the investigator. The Complaint Report is sustained in full.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 18th day of July, 2023.

APPEAL COMMITTEE:
Mark Ward
Brian Dempsey
Ashley Niedzwiecki

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #260
ON May 25, 2023

DATE OF REPORT JULY 7, 2023

This report is in response to a complaint filed with our office on behalf of ---------- (23FC260-003) and ---------- (23FC260-004) by ----------, a former school employee at USD #260. In the remainder of the report, ---------- will be referred to as "the complainant", ---------- will be referred to as "student 1", and ---------- will be referred to as "student 2."

Student 1 and student 2 are the sons of ----------. She will be referred to as "the mother" or "the parent" in this report. It is noted that the mother did not provide written consent for personally identifiable information contained in this investigation report to be shared with the complainant.

The complaint is against USD #260 (Derby Public Schools). In the remainder of the report, "USD #260," 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 and USD #260 received the complaint on May 25, 2023 and the timeline to investigate the allegations was extended by fourteen days to allow the parents to participate in the investigation process and to accommodate the summer / July 4 holiday break.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the Director of Special Education, Dawn Gresham, by telephone on May 26, 2023. The complainant was interviewed by telephone on June 13, 2023. The mother was interviewed by telephone on June 27, 2023 as part of the investigative process. Casey Lucas, Assistant Director of Special Education, was interviewed by telephone on July 5, 2023.

In addition to interviews, the Complaint Investigator reviewed documentation provided by the complainant, the parent and the LEA. While all of these documents were used to provided background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Plan (IEP) for student 1 dated November 30, 2022
- IEP for student 2 dated January 6, 2023
- Emails dated March 31, 2023 at 1:53 p.m. 2:09 p.m. and 2:23 p.m. between Brooke Stuckey, School Psychologist at Oaklawn Elementary School, and Whitney Burke, School Psychologist at Stone Creek Elementary School
- Admit Report for student 1
- Admit Report for student 2
- Email dated April 4, 2023 at 3:02 p.m. written by Ms. Stuckey to Dawn Gresham, Director of Special Education, and Casey Lucas, Assistant Director of Special Education, regarding the transfer process
- Email dated April 5, 2023 at 3:38 p.m. written by Ms. Lucas to Ms. Stuckey with clarification and next steps
- IEP Amendment Form for Minor Changes Not Requiring a Full IEP Team Meeting for student 1 dated April 18, 2023
- IEP for student 1 developed on November 30, 2022 and amended on April 18, 2023
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated April 4, 2023 for student 2
- Email dated April 10, 2023 at 1:22 p.m. written by Ms. Casey to the school teams at Swaney Elementary School and Tanglewood Elementary School regarding a change in location for student 2
- Email dated April 12, 2023 at 3:41 p.m. written by the complainant to Lacey Browning, Teacher of student 1, regarding transfer IEP information not displaying in the USD #260 student information system
- PWN dated April 18, 2023 for student 1
- IEP Goal Progress Reports for student 1 dated May 15, 2023
- IEP Goal Progress Reports for student 2 dated May 22, 2023

Background Information

This investigation involves two brothers who transferred into the USD #260 in April 2023. Student 1 was enrolled in kindergarten and student 2 was enrolled in second grade at the time of the transfer. Student 1 was initially evaluated on January 3, 2021

and determined eligible for special education due to the exceptionality of Developmental Delay. Student 2 most recent reevaluation was conducted on December 5, 2020 and he continued meeting eligibility criteria for the exceptionality of Developmental Delay.

Both students transferred from USD # 407 (Russell Public Schools) with current IEPs in place. Student 1's IEP was developed on November 30, 2022 and student 2's IEP was developed on January 6, 2023.

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 complainant raised one issue that was investigated for both students.

> ISSUE ONE: The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate transfer procedures for the student during the 2022-23 school year.

Positions of the Parties

The complainant reported the transfer process for both students was not followed resulting in both students being placed inappropriately. The complainant indicated that both students were administratively placed in Derby school special education programs that differed significantly from the services described in their IEPs and that the school psychologists who should have handled the paperwork were not involved in the process. Both students were placed in settings in accordance with a reported verbal description of their placements by unknown staff at the previous district to unknown staff at Derby schools.

In regards to student 1, the complainant stated, "The team at the school where he was placed reported within days that they felt his placement was not appropriate. Administration indicated that he would not be moved."

In regards to student 2, the complainant stated, "The team at the school where he was placed reported within days that they felt his placement was not appropriate. He was moved to another program in another building within a short time of enrolling. It would appear the service line indicating 'Life Skills' was misinterpreted by someone not familiar with the Life Skills program in Derby."

USD #260 reported that the steps in the transfer process for students transferring from one school district in Kansas to another school district in Kansas were followed appropriately for both the student during the 2022-23 school year. School staff reported that the parent was involved in the decisions regarding services and placement of the students.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent of the student, the complainant, and LEA staff in USD #260.

Student 1's IEP was originally developed on November 30, 2022 in USD #407. The IEP required special education services in the general education setting for 600 minutes per week, attendant care for 60 minutes per week, special education instruction for reading and math in the special education setting for 1025 minutes per week, speech therapy for 40 minutes per week, occupational therapy (OT) for 20 minutes per week, and group counseling for 40 minutes per week. Based on a seven-hour school day, , the student was placed in the general education setting with special education support for approximately 46% of the school day and in the special education setting for approximately 54% of the school day.

Student 2's IEP was originally developed on January 6, 2023 in USD #407. The IEP required special education services in the general education setting for 675 minutes per week, attendant care for 150 minutes per week, special education instruction for reading, math, science, and life skills in the special education setting for 1350 minutes per week, speech therapy for 40 minutes per week, and group counseling for 20 minutes per week. Based on a seven-hour school day, , the student was placed in the general education setting with special education support for approximately 33% of the school day and in the special education setting for approximately 67% of the school day.

Based on the home address, the boys were initially enrolled at their neighborhood school, Stone Creek Elementary. An email exchange between Brooke Stuckey, School Psychologist at Oaklawn Elementary School and Whitney Burke, School Psychologist at

Stone Creek Elementary School on March 31, 2023 indicated that the students were "walk in" enrollments. Ms. Stuckey shared concerns that the district's transfer procedures had not been followed for student 1 prior to his assignment to her building and he needed a more restrictive setting.

Responding to Ms. Stuckey's email, Casey Lucas, Assistant Director of Special Services, reported the Stone Creek Principal contacted the sending school upon the students enrollment and believed neither students' IEP could be implemented in that building. Ms. Lucas indicated she spoke with USD #407 staff and the mother as well as reviewed both IEPs. Based on that information, the staff at the Central Office determined that both students needed placement in "categorical programs" housed in other elementary buildings. She indicated that the school team would need to gather data to support their recommendation for a more restrictive environment.

Enrollment documentation showed that student 1 was assigned to a PBIS [Positive Behavior Interventions and Supports] classroom in Oaklawn Elementary School at the time of enrollment. The school team was asked to collect data to support their recommendation that a more restrictive program was needed and a reevaluation of the student was initiated. The parent reported and documentation confirmed the IEP team for student 1 met on April 18, 2023 and amended the IEP to delete goal 4 and add benchmarks to goal 9 as well as to add transportation as a related service since the student was placed in the PBIS classroom at Oaklawn Elementary School rather than receiving services in his neighborhood school, Stone Creek Elementary School.

Student 2 was initially assigned to a Life Skills classroom at Swaney Elementary School. However, the school assignment for student 2 was changed when the IEP team at Swaney Elementary School collected data to show the student's IEP should be implemented in a Functional Skills classroom rather than a Life Skills classroom and the student was subsequently reassigned to that type of "categorical classroom" at Tanglewood Elementary School approximately two weeks following his initial enrollment.

The mother stated that she was contacted regarding the transition of both students into USD #260. She was in agreement with the change of building assignments for student 2 to a classroom setting that better "matched" his IEP. She also agreed with the addition of transportation as a related service for student 1 so that his IEP could be implemented in the PBIS classroom at Oaklawn Elementary School. The mother stated she has been very pleased with the services the students are receiving in their "categorical classrooms" at this time and the progress they have made since enrollment.

Applicable Regulations and Conclusions

If a child with a disability who had an IEP that was in effect in a previous public agency in the same State transfers to a new public agency in the same State, and enrolls in a new school within the same school year, federal regulations at 34 C.F.R. 300.323(e) require that the new public agency (in consultation with the parents) must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous public agency, until the new public agency adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP for the child.

Section G. Transfer within the State and from Out of State in Chapter 4: The Individualize Education Program (IEP) of The Kansas Special Education Process Handbook states:

> When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child's records, including IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous school district in which the child was enrolled.
>
> When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide 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). When a student moves within the state, eligibility has already been established and a reevaluation is not required.

While the district may have specific procedures that should be followed when a student transfers into the district, it is noted that neither the IDEA nor the Kansas regulations require specific school personnel to conduct the transfer process. Instead, the requirement is that school staff, in consultation with the parents, determine the comparable services to be provided to the student until such time that the IEP document is received and, either adopted by the new school district, or a new IEP is developed and implemented by the new school district following the requirements of prior written notice for any changes in services or placement.

In this case, both students transferred into USD #260 from USD #407, another school district in Kansas. It appears that USD #260 had at least two staff members contact the sending school district to obtain copies of the students' IEPs and gather information about the students' special education and related services and placement. The mother reports speaking to school staff when the students enrolled regarding their IEPs and the services each received in USD #407. Documentation shows the students were initially enrolled and assigned to schools which housed specific "categorical classrooms" and special education programs on April 4, 2023 based on these interviews with the parent and the previous school district.

In student 1's case, it was determined that the IEP could be implemented in a PBIS classroom at Oaklawn Elementary School. The school team was initially concerned that the placement was not the most appropriate for the student. Documentation shows the school team was advised to gather any additional data to support their belief that a more restrictive setting was required by the student. The mother and school staff reported that a reevaluation is currently being conducted to help the IEP team to make a determination as to providing FAPE for this student. The IEP team met on April 18, 2023 and amended student 1's IEP to delete a goal, add benchmarks to another goal, and add transportation as a related service since the student was not receiving his special education and related services in his neighborhood school.

In student 2's case, the building assignment was changed from a "Life Skills" classroom to a "Functional Skills" classroom based upon data collected by the IEP team during the first two weeks of attendance. The school team determined that even though the transfer IEP stated "life skills", the comparable services required by the IEP were more appropriately implemented in the "categorical classroom" that USD #260 labels as "Functional Skills". Documentation shows this change of building assignment was discussed with the mother prior to making any change and coordinated with staff from both effected school buildings.

It is important to note that IDEA court decisions have differentiated between the placement, which is the special education program (services), and the location, which is the LEA assigned building/classroom where those services are provided to the student. The IDEA transfer procedures require comparable services be provided to the student but allows each public agency to determine the building/classroom within the district where those services will be provided. A change of services always requires appropriate prior written notice while a change in location does not. In this case, student 2's building assignment was changed but the services (program) remained the same.

Based on the foregoing, a violation of special education statutes and regulations *is not* substantiated for failing to follow the in-state transfer process for both student 1 and student 2 during the 2022-23 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. 91-40-51(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 May 25, 2023

DATE OF REPORT JULY 7, 2023

This report is in response to a complaint filed with our office on behalf of ---------- (23FC260-003) and ---------- (23FC260-004) by ----------, a former school employee at USD #260. In the remainder of the report, ---------- will be referred to as "the complainant", ---------- will be referred to as "student 1", and ---------- will be referred to as "student 2."

Student 1 and student 2 are the sons of ----------. She will be referred to as "the mother" or "the parent" in this report. It is noted that the mother did not provide written consent for personally identifiable information contained in this investigation report to be shared with the complainant.

The complaint is against USD #260 (Derby Public Schools). In the remainder of the report, "USD #260," 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 and USD #260 received the complaint on May 25, 2023 and the timeline to investigate the allegations was extended by fourteen days to allow the parents to participate in the investigation process and to accommodate the summer / July 4 holiday break.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the Director of Special Education, Dawn Gresham, by telephone on May 26, 2023. The complainant was interviewed by telephone on June 13, 2023. The mother was interviewed by telephone on June 27, 2023 as part of the investigative process. Casey Lucas, Assistant Director of Special Education, was interviewed by telephone on July 5, 2023.

In addition to interviews, the Complaint Investigator reviewed documentation provided by the complainant, the parent and the LEA. While all of these documents were used to provided background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Plan (IEP) for student 1 dated November 30, 2022
- IEP for student 2 dated January 6, 2023
- Emails dated March 31, 2023 at 1:53 p.m. 2:09 p.m. and 2:23 p.m. between Brooke Stuckey, School Psychologist at Oaklawn Elementary School, and Whitney Burke, School Psychologist at Stone Creek Elementary School
- Admit Report for student 1
- Admit Report for student 2
- Email dated April 4, 2023 at 3:02 p.m. written by Ms. Stuckey to Dawn Gresham, Director of Special Education, and Casey Lucas, Assistant Director of Special Education, regarding the transfer process
- Email dated April 5, 2023 at 3:38 p.m. written by Ms. Lucas to Ms. Stuckey with clarification and next steps
- IEP Amendment Form for Minor Changes Not Requiring a Full IEP Team Meeting for student 1 dated April 18, 2023
- IEP for student 1 developed on November 30, 2022 and amended on April 18, 2023
- Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated April 4, 2023 for student 2
- Email dated April 10, 2023 at 1:22 p.m. written by Ms. Casey to the school teams at Swaney Elementary School and Tanglewood Elementary School regarding a change in location for student 2
- Email dated April 12, 2023 at 3:41 p.m. written by the complainant to Lacey Browning, Teacher of student 1, regarding transfer IEP information not displaying in the USD #260 student information system
- PWN dated April 18, 2023 for student 1
- IEP Goal Progress Reports for student 1 dated May 15, 2023
- IEP Goal Progress Reports for student 2 dated May 22, 2023

Background Information

This investigation involves two brothers who transferred into the USD #260 in April 2023. Student 1 was enrolled in kindergarten and student 2 was enrolled in second grade at the time of the transfer. Student 1 was initially evaluated on January 3, 2021

and determined eligible for special education due to the exceptionality of Developmental Delay. Student 2 most recent reevaluation was conducted on December 5, 2020 and he continued meeting eligibility criteria for the exceptionality of Developmental Delay.

Both students transferred from USD # 407 (Russell Public Schools) with current IEPs in place. Student 1's IEP was developed on November 30, 2022 and student 2's IEP was developed on January 6, 2023.

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 complainant raised one issue that was investigated for both students.

> ISSUE ONE: The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate transfer procedures for the student during the 2022-23 school year.

Positions of the Parties

The complainant reported the transfer process for both students was not followed resulting in both students being placed inappropriately. The complainant indicated that both students were administratively placed in Derby school special education programs that differed significantly from the services described in their IEPs and that the school psychologists who should have handled the paperwork were not involved in the process. Both students were placed in settings in accordance with a reported verbal description of their placements by unknown staff at the previous district to unknown staff at Derby schools.

In regards to student 1, the complainant stated, "The team at the school where he was placed reported within days that they felt his placement was not appropriate. Administration indicated that he would not be moved."

In regards to student 2, the complainant stated, "The team at the school where he was placed reported within days that they felt his placement was not appropriate. He was moved to another program in another building within a short time of enrolling. It would appear the service line indicating 'Life Skills' was misinterpreted by someone not familiar with the Life Skills program in Derby."

USD #260 reported that the steps in the transfer process for students transferring from one school district in Kansas to another school district in Kansas were followed appropriately for both the student during the 2022-23 school year. School staff reported that the parent was involved in the decisions regarding services and placement of the students.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent of the student, the complainant, and LEA staff in USD #260.

Student 1's IEP was originally developed on November 30, 2022 in USD #407. The IEP required special education services in the general education setting for 600 minutes per week, attendant care for 60 minutes per week, special education instruction for reading and math in the special education setting for 1025 minutes per week, speech therapy for 40 minutes per week, occupational therapy (OT) for 20 minutes per week, and group counseling for 40 minutes per week. Based on a seven-hour school day, , the student was placed in the general education setting with special education support for approximately 46% of the school day and in the special education setting for approximately 54% of the school day.

Student 2's IEP was originally developed on January 6, 2023 in USD #407. The IEP required special education services in the general education setting for 675 minutes per week, attendant care for 150 minutes per week, special education instruction for reading, math, science, and life skills in the special education setting for 1350 minutes per week, speech therapy for 40 minutes per week, and group counseling for 20 minutes per week. Based on a seven-hour school day, , the student was placed in the general education setting with special education support for approximately 33% of the school day and in the special education setting for approximately 67% of the school day.

Based on the home address, the boys were initially enrolled at their neighborhood school, Stone Creek Elementary. An email exchange between Brooke Stuckey, School Psychologist at Oaklawn Elementary School and Whitney Burke, School Psychologist at

Stone Creek Elementary School on March 31, 2023 indicated that the students were "walk in" enrollments. Ms. Stuckey shared concerns that the district's transfer procedures had not been followed for student 1 prior to his assignment to her building and he needed a more restrictive setting.

Responding to Ms. Stuckey's email, Casey Lucas, Assistant Director of Special Services, reported the Stone Creek Principal contacted the sending school upon the students enrollment and believed neither students' IEP could be implemented in that building. Ms. Lucas indicated she spoke with USD #407 staff and the mother as well as reviewed both IEPs. Based on that information, the staff at the Central Office determined that both students needed placement in "categorical programs" housed in other elementary buildings. She indicated that the school team would need to gather data to support their recommendation for a more restrictive environment.

Enrollment documentation showed that student 1 was assigned to a PBIS [Positive Behavior Interventions and Supports] classroom in Oaklawn Elementary School at the time of enrollment. The school team was asked to collect data to support their recommendation that a more restrictive program was needed and a reevaluation of the student was initiated. The parent reported and documentation confirmed the IEP team for student 1 met on April 18, 2023 and amended the IEP to delete goal 4 and add benchmarks to goal 9 as well as to add transportation as a related service since the student was placed in the PBIS classroom at Oaklawn Elementary School rather than receiving services in his neighborhood school, Stone Creek Elementary School.

Student 2 was initially assigned to a Life Skills classroom at Swaney Elementary School. However, the school assignment for student 2 was changed when the IEP team at Swaney Elementary School collected data to show the student's IEP should be implemented in a Functional Skills classroom rather than a Life Skills classroom and the student was subsequently reassigned to that type of "categorical classroom" at Tanglewood Elementary School approximately two weeks following his initial enrollment.

The mother stated that she was contacted regarding the transition of both students into USD #260. She was in agreement with the change of building assignments for student 2 to a classroom setting that better "matched" his IEP. She also agreed with the addition of transportation as a related service for student 1 so that his IEP could be implemented in the PBIS classroom at Oaklawn Elementary School. The mother stated she has been very pleased with the services the students are receiving in their "categorical classrooms" at this time and the progress they have made since enrollment.

Applicable Regulations and Conclusions

If a child with a disability who had an IEP that was in effect in a previous public agency in the same State transfers to a new public agency in the same State, and enrolls in a new school within the same school year, federal regulations at 34 C.F.R. 300.323(e) require that the new public agency (in consultation with the parents) must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous public agency, until the new public agency adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP for the child.

Section G. Transfer within the State and from Out of State in Chapter 4: The Individualize Education Program (IEP) of The Kansas Special Education Process Handbook states:

> When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child's records, including IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous school district in which the child was enrolled.
>
> When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide 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). When a student moves within the state, eligibility has already been established and a reevaluation is not required.

While the district may have specific procedures that should be followed when a student transfers into the district, it is noted that neither the IDEA nor the Kansas regulations require specific school personnel to conduct the transfer process. Instead, the requirement is that school staff, in consultation with the parents, determine the comparable services to be provided to the student until such time that the IEP document is received and, either adopted by the new school district, or a new IEP is developed and implemented by the new school district following the requirements of prior written notice for any changes in services or placement.

In this case, both students transferred into USD #260 from USD #407, another school district in Kansas. It appears that USD #260 had at least two staff members contact the sending school district to obtain copies of the students' IEPs and gather information about the students' special education and related services and placement. The mother reports speaking to school staff when the students enrolled regarding their IEPs and the services each received in USD #407. Documentation shows the students were initially enrolled and assigned to schools which housed specific "categorical classrooms" and special education programs on April 4, 2023 based on these interviews with the parent and the previous school district.

In student 1's case, it was determined that the IEP could be implemented in a PBIS classroom at Oaklawn Elementary School. The school team was initially concerned that the placement was not the most appropriate for the student. Documentation shows the school team was advised to gather any additional data to support their belief that a more restrictive setting was required by the student. The mother and school staff reported that a reevaluation is currently being conducted to help the IEP team to make a determination as to providing FAPE for this student. The IEP team met on April 18, 2023 and amended student 1's IEP to delete a goal, add benchmarks to another goal, and add transportation as a related service since the student was not receiving his special education and related services in his neighborhood school.

In student 2's case, the building assignment was changed from a "Life Skills" classroom to a "Functional Skills" classroom based upon data collected by the IEP team during the first two weeks of attendance. The school team determined that even though the transfer IEP stated "life skills", the comparable services required by the IEP were more appropriately implemented in the "categorical classroom" that USD #260 labels as "Functional Skills". Documentation shows this change of building assignment was discussed with the mother prior to making any change and coordinated with staff from both effected school buildings.

It is important to note that IDEA court decisions have differentiated between the placement, which is the special education program (services), and the location, which is the LEA assigned building/classroom where those services are provided to the student. The IDEA transfer procedures require comparable services be provided to the student but allows each public agency to determine the building/classroom within the district where those services will be provided. A change of services always requires appropriate prior written notice while a change in location does not. In this case, student 2's building assignment was changed but the services (program) remained the same.

Based on the foregoing, a violation of special education statutes and regulations *is not* substantiated for failing to follow the in-state transfer process for both student 1 and student 2 during the 2022-23 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. 91-40-51(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 MAY 25, 2023

DATE OF REPORT JULY 11, 2023

This report is in response to a complaint filed with our office on behalf of ---------- by ----------, a former school employee at USD #260. In the remainder of the report, ---------- will be referred to as "the complainant", and ---------- will be referred to as "the student". The student is a child in foster care managed by St. Francis Ministries. His foster parent is ---------- who will be referred to as "the foster parent" in the remainder of this report.

Per IDEA regulations at 34 C.F.R. 300.30 which define the term "parent", the educational decision maker for the student is his birth mother, ----------. She will be referred to as "the mother" in this report. It is noted that the mother did not provide written consent for personally identifiable information contained in this investigation report to be shared with the complainant.

The complaint is against USD #260 (Derby Public Schools). In the remainder of the report, "USD #260," 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 and USD #260 received the complaint on May 25, 2023 and the timeline to investigate the allegations was extended by seventeen days to allow the parent to participate in the investigation process and to accommodate the summer / July 4 holiday break.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the Director of Special Education, Dawn Gresham, by telephone on May 26, 2023. The complainant was interviewed by telephone on June 13, 2023. The St. Francis Ministries Education Coordinator,

Stephanie Pfannesteil, was interviewed on June 14, 2023. Casey Lucas, Assistant Director of Special Services, was interviewed by telephone on July 5, 2023. The mother provided input regarding the investigation via email on July 7, 2023.

In addition to interviews, the Complaint Investigator reviewed documentation provided by the complainant, the St. Francis Ministries Education Coordinator, and the LEA. While all of these documents were used to provided background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Kansas State Department of Education (KSDE) and the Kansas Department for Children and Families (DCF) Letter Re: Education Records Transfer for Youths in Foster Care dated November 28, 2016
- Individualized Education Plan (IEP) for the student dated January 27, 2021
- IEP for the student dated April 27, 2021
- IEP for the student dated October 21, 2021
- Educational Enrollment Information for School Placement Form (EEISPF) dated July 22, 2022 for transition between USD #338 and USD #450
- Emergency Safety Intervention (ESI) Report dated August 29, 2022 from Greenbush Alternative School in USD #259
- EEISPF dated September 14, 2022 for transition between USD #450 and USD #259
- EEISPF dated October 5, 2022 for transition between USD #259 and USD #260
- Email dated October 5, 2022 at 1:59 p.m. written by Stephanie Pfannesteil, Education Coordinator for St. Francis Ministries, to Elaine Fulenwider, Special Education Social Worker at Bryant Opportunities Academy in USD #259, regarding student transfer
- Emails dated October 5, 2022 at 5:36 p.m. and 5:38 p.m. between Ms. Pfannesteil and Luann Sparks, Director of Alternative Learning
- Email dated October 5, 2022 at 8:11 p.m. written by Ms. Sparks to Ms. Gresham regarding the student's enrollment status as a student in foster care
- Emails dated October 6, 2022 at 12:04 a.m. and 2:05 a.m. between Casey Lucas, Assistant Director of Special Services, and Ms. Gresham regarding records review and placement
- Email dated October 6, 2022 at 8:31 a.m. written by Ms. Gresham to the foster mother regarding placement and building of attendance
- Emails dated October 10, 2022 at 11:30 a.m. and 11:46 a.m. between the complainant and Brooke Stucky, School Psychologist regarding the transfer
- Email dated October 10, 2022 at 12 noon written by Ms. Sparks to Ms. Pfannesteil regarding first day of attendance and transfer records request

- Emails dated October 10, 2022 at 2:08 p.m. and 2:59 p.m. between Ms. Lucas and Ms. Stucky
- Email dated October 11, 2022 at 9:27 a.m. written by Ms. Fulenwider to Ms. Stucky regarding services and placement
- Email dated October 11, 2022 at 10:12 p.m written by Ms. Stucky to Ms. Gresham
- Emails dated October 11, 2022 at 1:53 p.m. and 2:34 p.m. between the complainant and Ms. Stucky regarding services
- Email dated October 11, 2022 at 1:55 p.m. from Ms. Stucky and Rebecca Wong, OT regarding services.
- Email dated October 11, 2022. at 2:59 p.m. written by Ms. Gresham and Douglas Berryman, Principal at Tri-City Day School
- Emails dated October 19, 2022 at 12:40 p.m. and 2:28 p.m. between Ms. Stucky and Mr. Berryman
- Emails dated November 3, 2022 at 3:45 p.m. and November 4, 2022 at 7:52 a.m. and 10:24 a.m. between the complainant and Jennifer Skaggs, Speech/Language Pathologist (SLP)
- Notification of Meeting dated November 7, 2022 scheduling an IEP team meeting with the mother for November 16, 2022
- Emails dated November 9, 2022 at 8:31 a.m., 8:59 a.m., 9:01 a.m., 11:08 a.m., and 12:57 p.m. between the complainant and Tracey Snodgrass, Student Records Clerk
- Email dated November 16, 2022 at 9:25 p.m. written by Ms. Gresham to Ms. Lucas and staff at Tri-City Day School
- Speech Therapy Provider Log dated between November 30, 2022 through May 9, 2023
- Occupational Therapy (OT) Provider Log dated between November 11, 2022 through January 18, 2023
- Response to the allegation dated June 6, 2023 written by Dawn Grisham, Director of Special Services

Background Information

This investigation involves an eleven-year-old fifth grade male with an IEP who transferred to USD #260 on October 5, 2023. The student is in foster care managed by St. Francis Ministries. Within the past 12 months, the student has lived with at least three different foster families and received inpatient mental health services in four different school districts. The student has mental health diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Post-Traumatic Stress Disorder (PTSD). His most recent special education reevaluation was conducted on April 21, 2021 and he was

determined to continue to be eligible to receive special education and related services due to the exceptionality of emotional disturbance.

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 complainant raised one issue that was investigated.

Issue One

> ISSUE ONE: The USD #260, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate transfer procedures for the student during the 2022-23 school year.

Positions of the Parties

The complainant reported the transfer process was not followed which resulted in the student not receiving the required special education and related services upon his enrollment into USD #260. The complainant stated:

The student was administratively placed in a Derby schools special education program before his most recent IEP records were received or even requested from his previous school. The school psychologists who should have handled his paperwork were not even informed of his enrollment in the district prior to his first attendance day. He was placed in a setting in accordance with the out-of-date IEP paperwork provided by St. Francis. Official records from his previous school were not requested prior to his first attendance day in Derby. He had to be moved to a new placement within days after the correct records were received. He did not receive related services from the time he enrolled at Derby Hills until his new IEP was written in November.

USD #260 reported that the steps were followed appropriately for this student in both of the transfer processes required for students who are transferring from one school district in Kansas to another school district in Kansas and in foster care and special

education. The district acknowledged that the original placement was based upon the best interest determination procedures including both interviews with the sending school district and the foster mother, which are required when students in foster care transfer into a school district. The district noted that student records were obtained in a timely manner and, once the written records were received, the student's placement was changed to match the most current information contained in the student's IEP.

USD #260 also acknowledged that the student was not provided with 3 hours of speech services and 2.50 hours of occupational therapy (OT) services during the transition period. However, the district reported compensatory services were offered and provided to the student during the 2022-23 school year.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent of the student, the complainant, and LEA staff in USD #260.

The foster mother emailed the foster liaison for USD #260, Luan Sparks, and the special services director, Dawn Gresham, on October 5, 2022 at 12:40 p.m. stating:

> We are needing to enroll a new foster child. He has an IEP and BIP [Behavior Intervention Plan]. Dawn – I included you because this child will likely need to attend the PBIS [Positive Behavior Interventions and Supports] program at Oaklawn. He is a 5th grader and is coming out of inpatient treatment, really needs a lot of emotional / behavioral / social support. He has not been in school for some time now. I have asked his Case Team with St. Francis Ministries to please email you both ALL of his educational records. Please let me know what we need to do to get the ball rolling on getting him enrolled in the correct school and behavioral program.

Educational Enrollment Information for School Placement Form (EEISPF)

At 8:16 p.m. that same day, Ms. Sparks emailed the foster mother and both the director and assistant director of special services indicating that St. Francis Ministries had provided the EEISPF documents and the student was cleared to enroll into USD #260. She indicated that his special education services and school of attendance would be determined by the special services team based on his records. Attached to the email were both the September 14, 2022 EEISPF form between USD #480 and USD #259 as well as the October 5, 2022 EEISPF form between USD #259 and USD #260. The forms

show the student attends both ”regular” and “special education” but “alternative school” was not checked.

The October 5, 2022 EESIPF form stated, “He only attended school one day.” The September 14, 2022 EESIPF form stated:

> Per Project Plus: the student was only there for a short time but did fairly well. When frustrated, he eloped from the classroom. He got verbal with another student once and had to be walked to the cool-down room. The student needs to work on appropriate voice volume and talking about the family or the past seems to really upset him and bring him back to relive that moment in time. The student seems to like school and does well with remaining on task. He can be easily re-directed. He enjoys building things and playing with Lego, K'Nex, etc. Per Marlatt Elementary: the student has an IEP and behavior plan. He was and should be enrolled in a district program with behavioral health interventions in place (outside of the classroom). He has been suspended on 1/18/22 for physical contact with staff members. He is way below grade level. He needs to be taught at the level he understands and be given lots of breaks between tasks. He also has SW [social work] services. Very caring . . . needs lots of constant individual attention. He is below level probably due to the amount of school he has missed. He was very truant and lost lots of academic time due to missing so much school. The student loves to elope will do it multiple times a day. He will leave school campus, most of the time when followed he would return to school, although there were occasions we had to have police escort back to school. The student also liked to pull the fire alarms when wondering (sic) the building. He does get physical with staff, most of the time trying to get attention, but has been known to hit, punch, kick when agitated. Most of the time when someone would sit with him in the reflection room, he could de-escalate with talking. He also loves his stuffed animals and uses them to help comfort himself. The student did have quite a few ESIs [emergency safety interventions] last year. He loves to read, or be read to, to color, and to talk about Pokemon characters. He will work hard for coloring sheets of these characters.

The EESIPF forms were reviewed by both the director and assistant director of special services. An email exchange showed that, based on this information, both agreed the IEP could be implemented in the PBIS classroom at Oaklawn Elementary School. Ms. Gresham emailed the foster mother on Thursday, October 6, 2022 at 8:31 a.m. indicating the student was cleared to enroll in the PBIS program at Oaklawn Elementary

School and documentation shows the student was enrolled later that same day and began attending USD #260.

On Monday, October 10, 2022, the school psychologist at Oaklawn Elementary School contacted the previous school districts where the student had been enrolled and obtained the student's IEP records. She stated in an email dated that same day at 2:59 p.m. written to Ms. Gresham and Ms. Lucas:

> Upon reviewing the Amendment form, it is clearly coded for services in the J setting (day school). I called the Bryant Academy social worker and got some background information. The student has come from multiple hospitalizations and a day school setting. I believe the PBIS placement is completely incorrect as both previous schools had him in the restrictive setting they had available. His building in Shawnee Heights did have a general education building attached to the day school where kids sometimes attended electives if they could handle it.

Beginning on October 11, 2022, Interviews and documentation found that USD #260 made arrangements to change the student's placement in order to implement the current IEP. District staff contacted Haysville Public Schools with whom they contract for special day school services at Tri-City Day School. Arrangements for the provision of speech therapy and OT were made as well as setting up the transportation as a related service to the Tri-City Day School beginning on Monday, October 17, 2022. In addition, the district obtained the contact information for the mother who remains the educational decision maker for the student. In the interim, the student continued to attend the PBIS program at Oaklawn Elementary School.

USD #260 acknowledged that a paperwork error resulted in a delay of starting the provision of the related services of speech therapy and OT to the student until mid-November. Documentation and interviews found a total of 3-hours of speech therapy and 2.50 hours of OT had not been provided as required by the student's IEP.

Interviews and documentation show an IEP team meeting was held with the student's mother participating on November 16, 2022. At that time the IEP was amended with parent consent to include minute-for-minute make up services. Logs kept by the speech therapist and occupational therapist document these compensatory services were provided during the 2022-23 school year.

Applicable Regulations and Conclusions

If a child with a disability who had an IEP that was in effect in a previous public agency in the same State transfers to a new public agency in the same State, and enrolls in a new school within the same school year, federal regulations at 34 C.F.R. 300.323(e) require that the new public agency (in consultation with the parents) must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous public agency, until the new public agency adopts the child's IEP from the previous public agency or develops, adopts, and implements a new IEP for the child.

Section G. Transfer within the State and from Out of State in Chapter 4: The Individualize Education Program (IEP) of The Kansas Special Education Process Handbook states:

> When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child's records, including IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous school district in which the child was enrolled.
>
> When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide 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). When a student moves within the state, eligibility has already been established and a reevaluation is not required.

While the district may have specific procedures that should be followed when a student transfers into the district, it is noted that neither the IDEA nor the Kansas regulations require specific school personnel to conduct the transfer process. Instead, the requirement is that school staff, in consultation with the parents, determine the comparable services to be provided to the student until such time that the IEP document is received and, either adopted by the new school district, or a new IEP is developed and implemented by the new school district following the requirements of prior written notice for any changes in services or placement.

Please note that the transfer of this student into USD #260 was complicated by the dual requirement to follow transfer procedures for students who are foster care. This investigation will not address the transfer process for students in foster care as this does not fall under the jurisdiction of the IDEA. However, the outcome of this process is that a best interest determination is made as to which district should enroll the student in order to maintain the continuity of educational programming for the student despite the change in living arrangements.

In this case, the student transferred into USD #260 from USD #259, another school district in Kansas. On October 5, 2022, the best interest determination was made for the student to be enrolled in USD #260 with the placement and building assignment to be determined by the special services team.

The foster mother specifically stated the student had an IEP and BIP and believed the PBIS program was appropriate for the student. The EESIPF forms provided by St. Francis Ministries show the student received both "regular" education and "special" education. Based upon this information, the director and assistant director of special services determined comparable services could be provided to the student in the PBIS program at Oaklawn Elementary School. This information was shared with the foster mother on October 6, 2022 and the student enrolled that same day to continue to receive comparable services while the records were obtained.

On Monday October 10, 2022, the school psychologist at Oaklawn Elementary School contacted the previous school districts to obtain copies of the IEP and to gather information about the student's special education and related services and placement. At that time, she discovered that the most current IEP for the student actually required a "day school" placement as shown by a setting code of "J" rather than the "C" setting that was currently being provided to the student through the PBIS program at Oaklawn Elementary School. This information was shared with the director and assistant director of special services who made arrangements for the day school placement required by the most recent IEP to be implemented. Subsequently, the student was enrolled in the Tri-City Day School on October 17, 2022.

The IEP team, including the student's mother, amended the IEP on November 16, 2022 to continue the day treatment program and to add 3-hours of compensatory speech services and 2.50 hours of compensatory OT services. The district acknowledged that these services had not been provided to the student upon his initial enrollment into USD #260 due to a paperwork error.

Based on the foregoing, a violation of special education statutes and regulations *is not* substantiated for failing to follow the in-state transfer process for the student during the 2022-23 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. 91-40-51(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

DATE OF REPORT July 19, 2023

This report is in response to a complaint filed with our office by ----------, parents, on behalf of their 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 parents."

The complaint is against USD #233 (Olathe Public Schools). In the remainder of the report, USD #233 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 6/15/2023. The KSDE allows for a 30-day timeline to investigate the child complaint, which ends on 7/15/2023. An extension to 7/18/2023 was requested by the investigator on 7/14/2021and approved by KSDE.

Investigation of Complaint

Doug Tressler, Complaint Investigator, interviewed the parent by telephone on June 23, 2023, as part of the investigation.

USD #233 made the following school staff available for a telephone interview on June 26, 2023:

- Deb Chappell, Assistant Director of Special Education
- Matt Kuntsman
- Judy Martin

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 fee table 22-23

- BOE agenda April 7,2022, Olathe Public Schools
- Olathe Public Schools (OPS) statement of account
- OPS fees receipt
- ---------- evaluation and IEP dated April, 18, 2023
- Billing customer fee Ledger
- Board documents "student fees"
- E-mail clarification of policy and fee schedule
- E-mail Mark Ward to parent
- KSDE preschool grants FAQ 2122
- Olathe Public School response to formal complaint
- Olathe USD 233 board policy code DFG fees payment
- KSDE-MIS Data Dictionary

Background Information

The student is a preschool student who has an IEP for special education speech language services. The student receives these services through Olathe public schools. To receive the services the parent transports the student to the local elementary school where the student receives 30 minutes of speech services twice a week. The student does not receive any regular education through the district, and the student is not involved in any other district activities.

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: Whether the USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide a free and appropriate public education by charging an instructional materials fee for speech and language therapy services.
>
> ISSUE TWO as a systemic issue: Whether the USD #233, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act

(IDEA) 34 C.F.R. 300.39(b)(1), charged fees to children with disabilities as part of their special education program.

Positions of the Parties

Position of the Parent

The parent believes the school is violating their child's right to a free and appropriate public education by charging their child and their family an instructional materials fee for speech services.

The parent believes the fee schedule is in violation of (IDEA)34C.F.R.300.39(b)(1) and that the family should be refunded the charges they paid to the district. The parent also believes that the district policy J Student Fees, JS wherein students in the district are charged an instructional materials fee as part of the regular education program is in error and the fee schedule based on this policy should be changed.

The parent cites a letter from the United States Department of Education, dated June 27, 2002. In the letter, the United States Department of Education acknowledges that schools may charge incidental fees that are normally charged to nondisabled students or their parents as part of the regular education program.

Position of the District

The district denies that the student was not provided a free and appropriate public education. The district states that they did not charge for the student's specially designed instruction. The student was asked to pay a $50 enrollment fee (the district uses the term "instructional materials fee" interchangeably with "enrollment fee"), the same fee that is charged to all part-time students regardless of whether they are eligible for special education services or not. The district argues that the federal regulations under IDEA specifically allow school districts to charge enrollment fees that are normally charged to all students. The district believes it followed both special education legal requirements and guidance provided by KSDE when charging this fee.

According to the district, for the 2022-23 school year, all students enrolled in the Olathe Public Schools were charged an enrollment fee. This fee is $100 for students enrolled full-time and $50 for students enrolled part-time (3 hours per day or less). The district notes that the student that is the subject of this complaint was charged $50 as a part-time student enrolled in the District's Early Childhood program. The student was

charged the same enrollment fee as all other students enrolled and participating in Early Childhood, including non-identified students. The district further contends that the enrollment fee for all students is used to pay for instructional materials, which is why it is also sometimes called an instructional materials fee by the district.

The district further explains that the district Superintendent emailed the parent and copied the district's Board of Education in response to the parent's questions about the enrollment fee on March 28, 2023. The Superintendent provided a full explanation of the legal authority of the district to charge the fee and offered information about how the fee could be waived for financial need.

In the email, the Superintendent noted that the payment of these fees has no impact on the student's ability to attend school, receive general education services, or receive special education services. Students are never declined enrollment in the district based on failure to pay these fees.

In their argument, the parent cites the Board Policy JS and KSA 72-3352 in support of the complaint, however the district believes that the parent has misinterpreted the Board Policy meanings. The district argues that neither precludes the district from charging an enrollment fee for (the student). The district argues that the parent has mistakenly taken a portion of Policy JS out of context with regard to students enrolled in specific courses that require supplemental materials. In their argument, the district cites KSA 72-3352, which includes examples of this, such as specialized clothing and towels in physical education, shop, science courses, musical instruments for use in band or orchestra, materials or supplies which are consumed in specific courses, etc. The district also notes that Board Policy JS does not apply to the student and is not relevant to the parent's complaint since fees for specific courses are unrelated to enrollment fees. However, the investigator finds that neither the parent's nor the district argument, regarding either the Board Policy or KSA 72-3352, are relevant to this complaint. The policy and KSA 72-3352 are both referencing regular education, which this student does not participate in.

The district also argues that the parent also mistakenly cites a letter from the United States Department of Education, dated June 27, 2002. In the letter, the United States Department of Education acknowledges that schools may charge incidental fees that are normally charged to nondisabled students or their parents as part of the regular education program, but states that additional fees may not be charged for extended school year services when there is no general education summer school program. The district believes that this letter is not relevant to the parent's complaint as the

enrollment fee charged for her student was for the regular school year and not extended school year services. In this case the parent's argument, based on the letter is not relevant, but the district mistakes why it is not relevant. Again, this letter is referencing fees normally charged to students as part of their regular education services. The issue in this complaint is whether or not a student receiving special education only can be charged a fee.

The district also offers an e-mail, forwarded to them by the parent, in which the parents had asked KSDE for guidance on this specific topic. In response to this request, on May 10, 2023, Mr. Ward emailed the parent, stating the following, "In short, special education and related services must be provided at no cost. Therefore, no charge may be made for providing the speech services in your child's IEP. Speech services are the services the speech therapist provides. Instructional materials are not typically considered a service. Instructional materials in braille, for example, for a child who is blind, would be considered an assistive technology device that must be provided at no cost, but it is the braille component of the materials that must be provided at no cost, not the materials themselves."

The district argues, referencing the email from Mr. Ward, that it has not charged this student, or any other student, for providing the special education services in their IEP. The district further states that, "We regret if the district's interchangeable use of the terms "instructional materials fee" and "enrollment fee" have been confusing for the parent and caused her to rely on inapplicable policies, statutes and guidance. Regardless, the district is legally permitted to charge these fees and will review the terminology used to ensure parents clearly understand enrollment fees in the future."

In summary, the district states that the right of a school district to charge enrollment fees to all students is well established in law and practice. The district also states that it followed this, and guidance provided by the Kansas State Department of Education in charging this student the same enrollment fee that all other part-time Early Childhood Education enrolled students in the district are charged during the regular 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 #233.

The student is enrolled as a part time PRK student.

The student receives 30 minutes of speech services twice a week. The student does not receive any regular education through the district, and the student is not involved in any other district activities.

The enrollment/ instructional materials fee for Headstart is $0.00
The enrollment/ instructional materials fee for Jumpstart At-Risk is $0.00
The enrollment/ instructional materials fee for Early Childhood disabilities classroom is $100.00.

The enrollment/ instructional materials fee for non-disabled peer models in the Early Childhood disabilities classroom is $200.00/month. (the enrollment fee for the non-disabled peers is not on the fee schedule but was confirmed to the investigator in an email from Deb Chappell June 28, 2023).

The enrollment/instructional materials fee for part-time 3–5 year-old students receiving related service therapy only is $50.00

The enrollment fee K-12 for all students is $100.00.

The fee schedule was approved by the OPS BOE April 07, 2022, in accordance with OPS BOE Policy JJS “student fees”.

The district uses the words enrollment fee and instructional materials fee interchangeably. This was observed by the district and included in their response to the complaint.

In an email to the parent dated March 28, 2023, the Superintendent stated, “our district understands that because an enrollment fee is charged to all of our families, and the enrollment fee is specially used for the purchase of instructional materials for all of our students, the fee is appropriate under law. Those fees are charged to all students.”

The “Customer Fee Ledger” dated June 20, 2023 from USD #233, sent to the parent, labels the charge as instructional fees with the memo “speech”. Further handwritten notation on the receipt notes that this is an “enrollment fee”.

The Data Dictionary supplied by KSDE instructs district to code students based on the appropriate special education setting as determined by the IEP team. Based on the documentation provided in the student’s IEP dated April 18, 2023, the student would be

coded as a SP (separate Class) setting. Indicating that this student has no contact with the general education setting.

Applicable Regulations and Conclusions

CFR 300.39 (a)(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.

CFR 300.39 (a)(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—
(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards.

CFR300.39(b)(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

Applicable guidance: KSDE Preschool Grants FAQs SY2021-22

> "Districts and programs should consider several issues when determining whether they will charge fees and tuition to preschool students benefiting from Preschool-Aged At-Risk and Kansas Preschool Pilot funding:
>
> - Districts should not charge tuition for services supported by state aid via the Preschool-Aged At-Risk program or by Kansas Preschool Pilot grant funds. If children are attending full-day programs, districts may charge tuition for the portion of the day that is not supported by state funds.
> - Districts should not charge tuition or fees to students with IEPs. Students with disabilities must have access to a free and appropriate public education (FAPE).
> - Are processes in place to waive tuition and fees for families experiencing financial hardship? (answer to question 18 page 12)"

In its position statement, the district references CFR300.39(b)(1) At no cost means "that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program." The district's justification for charging fees for their preschool programs "(it is) the right of school district to charge enrollment fees to all students is well established in law and practice. The district followed this, and

guidance provided by the Kansas State Department of Education, in charging this student the same enrollment fee that all other part-time enrolled students in (the district) are charged during the regular school year". The district goes further to use emails from KSDE legal to substantiate specifically charging enrollment and instructional fees for the early childhood disabilities classrooms. However, when the district creates a specific fee schedule for students receiving "ONLY" OT.PT or SLP related services and has a "Customer Fee Ledger" from USD #233 which labels the charge as instructional fees with the memo "speech", the district is clearly identifying this charge as specific to the special education classroom setting and is misunderstanding the provision of related service as special education under CFR 300.39 (a)(2).

The district misinterprets C.F.R. 300.39(b)(1). That regulation states that special education students may be charged "incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program (emphasis added). It is essential that this provision be read in its entirety. We cannot ignore the part of this provision that says, "as part of the regular education program." Reading the entire regulation, clarifies that this exception, allowing a charge for incidental fees, applies only to children with disabilities who are participating in the regular education program. That means that when a child with a disability is not participating in the general education program, this exception permitting the charging of incidental fees normally charged to nondisabled students does not apply. The circumstances in this complaint provide a prime example of a situation where this exception, allowing for the charging incidental fees, does not apply. This student is not participating in a general education program in any manner. The student is enrolled in the district only to receive speech services for 30 minutes, two times per week. The student does not receive any regular education through the district and is not involved in any other district activity. Accordingly, the district may not use the exception in C.F.R. 300.39(b)(1), to charge incidental fees to this student.

Further, when the district references the e-mail from KSDE, "*Instructional materials are not typically considered a service. Instructional materials in braille, for example, for a child who is blind, would be considered an assistive technology device that must be provided at no cost, but it is the braille component of the materials that must be provided at no cost, not the materials themselves."* as evidence that they are appropriately charging an instructional materials fee, the district misinterprets the intent of the e-mail. The email references those instances where a student participates in both general educational and special educational settings consuming materials associated with general educational activities and special education. However, as indicated above, in the instance under investigation,

the child only attends for Speech Language Therapy. The student's IEP, dated April, 18, 2023, defines the instructional setting as "Special Education direct services outside the regular education classroom, programs and other locations"; therefore, in this separate class setting (as defined by the KSDE-MIS data dictionary), the instructional materials are a part of the specially designed instruction created for that child as a part of the individualized educational program (IEP) in place for that child.

Based on the unique circumstances of this child per CFR 300.39 (a)(2)(i) the speech and language services being delivered to this child may be either related services or special education. Either way, all materials and instruction provided to the student are a part of the services specified in the student's IEP, and so are part of the student's "free" appropriate public education. Therefore, it is the opinion of the investigator that the district is in violation of CFR300.39(b)(1) At no cost, meaning that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

ISSUE ONE Conclusion: Based on the foregoing, a violation of special education statutes and regulations is substantiated for the failure of the district to provide special education at no cost, under 34 C.F.R. 300.39(b)(1), to the student in this complaint.

ISSUE TWO Conclusion: Based on the foregoing, a systemic violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), under 34 C.F.R. 300.39(b)(1), is substantiated due to the district charging fees to children with disabilities a fee as part of their special education only program.

Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with a special education statute and regulation. A systemic violation occurred in the following area:

A. Federal regulations at:
    a. 34 CFR 300.39 (a)(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.
    b. 34 CFR 300.39 (a)(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—(i)

Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards.

c. 34 CFR300.39(b)(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
    1. In this case, USD #233 committed a systemic error when it charged disabled students who received ONLY OT, PT, or SLP services as special education for instructional materials in the special education setting.

d. Based on the foregoing, USD #233 is directed to take the following actions:
    1. By Aug 1, 2023, USD #233 will submit to KSDE a list of all special education part-time students participating only in direct special education therapy services (OT, PT, SLP)and charged a fee in the 22-23 school year.
        1. No later than Sept 1 USD #233 will show evidence that reimbursement for these fees has been provided.
    2. By September 1, 2023, USD #233 will submit to KSDE an updated Student Fee Schedule that demonstrates students with IEPs are not charged fees for participating in their special education program.

e. Further, USD # 233 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. 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). 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.

Doug Tressler
BS Elem Ed, MS Sp Ed, MS Ed Admin
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 #229
ON JUNE 29, 2023

DATE OF REPORT JULY 29, 2023

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 #229 (Blue Valley Public Schools). In the remainder of the report, "USD #229," the "school," the "district" or the "local education agency (LEA)" shall refer to this agency responsible for complying with the Individuals with Disabilities Education Act (IDEA).

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 USD #229 received the complaint on June 29, 2023.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, interviewed the parent by telephone on July 17, 2023. The father provided additional information on July 19, 2023.

Mark Schmidt, Assistant Superintendent of Special Education for USD #229 was interviewed by telephone on July 21, 2023. Lauren Gore, Extended School Year Administrator, was interviewed by telephone on July 24, 2023.

In completing this investigation, the Complaint Investigator reviewed documentation provided by both the parent and the LEA. While all of these documents were used to provided background and context, the following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program (IEP) dated March 24, 2022

- Evaluation Report dated April 20, 2023
- IEP dated April 20, 2023
- PowerPoint presentation for extended school year (ESY) staff showing dates and hours of attendance
- Attendance Record for the 2023 Extended School Year (ESY) Summer Session
- Email thread dated between June 1, 2023 and June 3, 2023 between the parent and Lauren Gore, ESY Administrator at Heartland Elementary School
- Email dated June 8, 2023 at 10:59 a.m. written by Ms. Gore to Nacolle Burke, ESY Special Education Teacher
- Email dated June 8, 2023 at 12:25 p.m. written by Ms. Burke to the parent
- Email dated June 8, 2023 at 12:43 p.m. written by the parent to Ms. Burke and Ms. Gore
- Emails dated June 12, 2023 at 4:50 a.m. and 6:53 a.m. between Ms. Gore and the parent
- Email dated June 27, 2023 at 11:32 a.m. written by Mr. Schmidt to the parent
- IEP Goal Progress Report dated June 29, 2023
- Response to the Allegations dated July 5, 2023 written by Mr. Schmidt

Background Information

This investigation involves an eight-year-old male student currently enrolled in the second grade at Indian Valley Elementary School in USD #229. The student was initially found eligible for special education and related services at the age of three under the exceptionality category of Developmental Delay on October 6, 2017 while attending preschool at Oak Hill Elementary School in USD #229. His initial IEP provided specialized instruction, occupational therapy (OT), speech therapy, and language therapy. He transitioned to grade school at Indian Valley Elementary School in August 2020 and USD #229 has continued to provide specialized instruction and related services as required by his IEPs through the current date. His most current reevaluation was conducted on April 20, 2023 and it was determined that the student continues to meet the eligibility criteria for the exceptionality category of Speech/Language Disorder.

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 #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically the extended school year (ESY) services and transportation as a related service during the 2023 ESY program.

Positions of the Parties

The parent reported USD #229 failed to provide the student with speech/language therapy during the entire 2023 ESY. The parent indicated USD #229 recommended no ESY services but he was not in agreement and refused to consent to this significant change of services. He believed the student would continue to receive all the special education and speech/language services to address all goals included in the student's current IEP.

The father also reported the student was not provided transportation on two separate dates due to school bus issues and that he had to provide transportation on those two dates so the student would be able to access his ESY services.

USD #229 acknowledged that the student did not receive any speech/language services during ESY 2023 but indicated the student's IEP did not require those services. USD #229 also acknowledged that there were two mornings that the father drove the student to school to access the ESY services because the bus was running late.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #229.

The 2023 ESY was held between June 5, 2023 and June 29, 2023. The student was assigned to Heartland Elementary School to receive the required ESY services. According to Google Maps, Heartland Elementary School is two miles from the student's home.

ESY services at Heartland Elementary School were scheduled to provide 225 minutes per day of special education services. Services were provided daily starting at 8:20 a.m.

and ending at 12:05 p.m. on each of the four days each week during ESY. Lauren Gore served as the administrator for the ESY summer 2023 session.

The current IEP dated April 20, 2023 requires ESY services for specialized instruction in a special education classroom for 225 minute four times each week between June 5, 2023 and June 29, 2023. The justification for ESY services states:

> The IEP team recommended that ESY be discontinued as data indicated the student did not qualify. Parent did not consent for this significant change of services. As such, the student is eligible for ESY summer 2023.

Both the parent and school staff acknowledged this discussion and the parent's refusal to provide consent for any change in ESY services during the 2022-23 school year.

Documentation shows the student attended ESY during the summers following his kindergarten and first grade years "due to being at a critical stage of learning". The student's previously implemented IEP was dated March 24, 2022 and required ESY services for specialized instruction in a special education classroom for 225 minute four times each week between June 2, 2022 and June 30, 2022. The justification for ESY services states:

> The student is at a critical stage of learning. Academic Winter Scores: Nonsense Word Fluency Correct Letter Sounds 19, Well Below Benchmark; Oral Reading Fluency 19, Below Benchmark; Reading Composite Score 94, Well Below Benchmark. The student does not meet the criteria to receive speech and language services for Extended School Year. He does not show significant regression of skills upon returning from extended leave.

Documentation and interviews reflect USD #229 scheduled 225 minutes per day of specialized instruction with a special education teacher for four days per week between June 5, 2023 and June 29, 2023 for the student.

Attendance records show the student went home sick on June 13, 2023 and was absent from school on June 14, 2023 due to illness.

According to the April 20, 2023 IEP, transportation is not required as a related service during the regular school year. However, USD #229 reported that all students with an IEP who attend the 2023 ESY session are offered and, if accepted and registered, provided with transportation as a related service in order to access these required

additional summer services. The father registered for bus transportation for the student during ESY.

The father reported and USD #229 acknowledged that the father provided transportation to school on June 12, 2023 and June 26, 2023 due to bussing issues. The father stated that he was not sure what was going on with the bus on those dates but wanted to make sure his son did not miss any special education services during ESY.

USD #229 provided a summary of the bussing issues for both dates as noted below:

> June 12, 2023: The father brought the student to school and he arrived before the start of ESY (prior to 8:20 am). No services were missed. Upon investigation, the bus driver had arrived at the bus stop 10 minutes early and left after 5 minutes when the student didn't show up. The driver was corrected and told that he must wait until 5 minutes after the assigned pick-up time to leave.
>
> June 26, 2023: The father brought the student to school and he arrived before the start of ESY (prior to 8:20 am). Upon investigation, the bus was running late due to a flat tire. The bus arrived at 8:21 am and left his bus stop at 8:24. We checked the Textcaster system and found that neither the father nor mother was signed up for the Texcaster communication system. We confirmed that messages on Textcaster were sent out at 7:25 am and 7:47 am regarding the problem.

Documentation showed students who rode the bus on June 26, 2023 arrived at school approximately 15 – 20 minutes late. The district reported the father wanted a personal phone call whenever the bus transportation would not be running on schedule. School staff indicated the district offers a "TextCaster" alert system to district families for any time the busses will be running late. The father received these texts during the 2022-23 school year; however, the student's parents did not sign up for this service during ESY.

Applicable Regulations and Conclusions

Federal regulations at 34 C.F.R. 300.106(a)(1) and (2) require each public agency to provide extended school year services as determined necessary to provide a free appropriate public education (FAPE) to the student by the IEP team.

In this case, the father believes the student should have received speech/language therapy services during the 2023 ESY summer session. However, documentation shows the April 20, 2023 IEP only requires ESY services for specialized instruction in a special

education classroom for 225 minute four times each week between June 5, 2023 and June 29, 2023.

Documentation and interviews found the student received ESY services following both kindergarten and first grade due to being in a "critical stage of learning." However, the school staff recommended discontinuing ESY services following second grade but the father was not in agreement. He did not provide written consent for this significant change in services and so the same ESY services were included in the April 20, 2023 IEP as were provided in the previously agreed upon IEP dated March 24, 2022. That IEP only required ESY services for specialized instruction in a special education classroom for 225 minute four times each week between June 2, 2022 and June 30, 2022. This IEP specifically states, "The student does not meet the criteria to receive speech and language services for Extended School Year. He does not show significant regression of skills upon returning from extended leave."

Interviews and documentation showed 225 minutes per day of specialized instruction was made available to the student in the special education classroom for four days each week during the 2023 ESY session. It is noted that the only time special education services were not provided to student was the result of absences due to illness of the student.

USD #229 reported that all students with an IEP who attend the 2023 ESY session were offered transportation as a related service in order to access these required additional summer services. The student's father registered the student for these services. The district acknowledged there were bus issues on June 12, 2023 and again on June 26, 2023 which disrupted the typical morning bus schedule. In the first situation, the bus arrived and left prior to the student's scheduled pick-up time; in the second situation, the bus arrived late causing students to miss 15-20 minutes of class that day. In both situations, the father provided the transportation from the family home to Heartland Elementary School so the student could access the required ESY services.

Based on the foregoing, a violation of special education statutes and regulations *is* substantiated for failing to provide transportation as a related service to the assigned school on two dates during ESY summer 2023 services.

> ISSUE TWO: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with IEP goal progress reports following the 2023 extended school year (ESY) program.

Positions of the Parties

The parent stated he requested and received weekly updates of the student's progress during the 2023 ESY program. However, these only included general information and no specifics about the student's progress towards his IEP goals. The father was also concerned that USD #229 only provided IEP goal progress reports on two of the student's IEP goals at the end of the 2023 ESY session.

USD #229 reports the father requested weekly communication from the ESY special education teacher and these were provided; however, the student's current IEP only required IEP goal progress reports at the end of each grading period, in this case, after June 29, 2023 when the 2023 ESY session ended. The district also indicated that the current IEP dated April 20, 2023 clearly shows the special education services that will be provided and the goals that will be addressed during ESY and that an IEP goal progress report was provided to the father on June 29, 2023.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and LEA staff in USD #229.

The findings of Issue One are incorporated herein by reference.

Documentation and interviews found the father requested weekly updates regarding student progress so that he could "reinforce skills we are working on at school at home". In an email to the ESY special education teacher dated June 8, 2023, Ms. Gore requested that the ESY teacher provide a "brief email every Thursday simply stating what you worked on this week and will work on next week". Ms. Burke emailed a summary of the first week of ESY to the parent on that same date.

The parent emailed Ms. Gore on June 8, 2023 indicating the weekly report did not include speech/language updates or address all reading and writing goals on the student's IEP. On June 12, 2023 at 4:50 a.m., Ms. Gore responded in an email as noted below:

> I wanted to follow up on what we will continue to work with the student on at ESY this summer. I've attached his IEP as well so can see what I am referring to. Page 11 of the IEP refers to the services we are supporting the student with the summer. Those outline here are the special education services from a special education teacher meaning that Nacolle [ESY special education teacher] is

supporting goals that Cindy Ray [2022-23 special education teacher] was working on. Page 7 and 8 shows the goals that are check marked for ESY work this summer and those are the following . . . What this means is that when you receive Nacolle's weekly emails of skills they worked on, they will primarily be related to the two goals above.

Documentation shows and Ms. Gore reported that the IEP goal progress report for the ESY grading session was provided to the parent on June 29, 2023.

Applicable Regulations and Conclusions

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, documentation and interviews support a finding that USD #229 provided the parent with an ESY IEP goal progress report for the two goals designated to be addressed between June 5 and June 29, 2023 as required by the April 20, 2023 IEP.

Based on the foregoing, a violation of special education statutes and regulations *is not* substantiated for failing to provide the parent with IEP goal progress reports following the 2023 extended school year (ESY) program.

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 area:

A. Federal regulations at 34 C.F.R. 300. 106(a)(1) and (2) require each public agency to provide extended school year services as determined necessary to provide a free appropriate public education (FAPE) to the student by the IEP team.

   In this case, the USD #229 provided the required 225 minutes per day of specialized instruction in the special education setting for four days each week between June 5, 2023 and June 29, 2023 as required by the April 20, 2023 IEP. However, the district acknowledged that the student was not provided with transportation due to bussing issues on June 12 and June 26, 2023. The father provided transportation to school on both these dates so the student would have access to his specialized instruction beginning at 8:20 a.m.

Based on the foregoing, USD #229 is directed to take the following actions:

1. Within 15 calendar days of the date of this report, USD #229 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. 300.106(a)(1) and (2) which requires each public agency to provide extended school year services as determine necessary to provide FAPE to the student by the IEP team.
2. No later than September 15, 2023, USD #229 will provide reimbursement to the parent for a total of four miles at the district's mileage reimbursement rate for providing the transportation as a related service on June 12 and June 26, 2023. USD #229 shall provide SETS with a copy of the correspondence sent to the parent which will include the check number no later than September 30, 2023.
3. Further, USD #229 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). 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. 91-40-51(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)

23FC60 Appeal Review

In the Matter of the Appeal of the Report
Issued in Response to a Complaint Filed
Against Unified School District No. 229,
Blue Valley Public Schools: 23FC229-005

DECISION OF THE APPEAL COMMITTEE

BACKGROUND

This matter commenced with the filing of a complaint on June 29, 2023, by xxxxx, xxxxxxxxxxx on behalf of his child, xxxxx xxxxxxxxxxxxx. In the remainder of the decision, Mr. xxxxxxxxxxxxxx will be referred to as "the parent", and xxxxxx xxxxxxxxxxxx will be referred to as "the student". An investigation of the complaint was undertaken by complaint investigator, Nancy Thomas, on behalf of the Special Education and Title Services Team at the Kansas State Department of Education. Following that investigation, a Complaint Report, addressing the parent's allegations, was issued on July 29, 2023. That Complaint Report concluded that there was a violation of special education laws and regulations.

Thereafter, both parties filed an appeal of the Complaint Report. Upon receipt of the appeals, an appeal committee was appointed, and it reviewed the original complaint filed by the parent, the complaint report, the district's appeal and supporting documents, the parent's appeal and supporting documents, and the parents' and districts responses to the appeals. 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.

No new issues will be decided by the Appeal Committee. The appeal process is a review of the Complaint Report. The Appeal Committee does not conduct a separate investigation. The appeal committee's function will be to determine whether sufficient evidence exists to support the findings and conclusions in the Complaint Report.

DISTRICT APPEAL

The following issue in this complaint has been addressed by the Appeal Committee:

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> ISSUE ONE: The USD#229, in violation of state and federal regulations implementing the individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP as written, specifically the extended school year (ESY) services and transportation as a related service during the 2023 ESY program.

The Investigator found that a violation did occur. In response, the district argues that,

1. the complaint investigator's conclusion is flawed because USD #229 "*offered* bus transportation on the two days at issue", and
2. a "mere two days" of missed bus service were at most a "*de minimus* failure to implement the IEP, which resulted in no impact at all to the student's receipt of FAPE."

The district argues that "while there is no dispute that the student did not ride Blue Valley's bus to school on June 12 and June 26, 2023, that focus obscures the relevant circumstances" and does not "ask the right question." The district further argues that although it is obligated to offer the services stated in a student's IEP, the district "cannot force students or parents to accept or cooperate with the services offered".

As noted by the investigator, ESY means special education and related services that "are provided to a child with a disability beyond the normal school year; in accordance with the child's IEP." (34 C.F.R. §300.106(b)(1)(i) & (ii)). Under Kansas law, a district is required to provide all services listed in a student's IEP, including related services, which are deemed necessary for a student "to advance appropriately toward attaining the annual goals"; and "to be involved in and make progress in the general education curriculum." K.S.A.72-3429.

In the complaint report, the investigator noted, and documents confirm, that the IEP team recommended the student's ESY services be discontinued for summer 2023, however, the student's parent would not consent to the change in services. Therefore, the student remained eligible for ESY services during the summer of 2023. Also, as stated by the investigator, and confirmed by documentation, the student's IEP does not include transportation services. In the report, the investigator did note that, according to the district, "all students with an IEP who attend the 2023 ESY session are offered, and *if accepted and registered*, provided with transportation." As a result, the student was offered, and the parent did accept and register for, bussing to and from home.

The Committee agrees with the district that it is "obligated to offer the services stated in a student's IEP". However, in this case, the Committee finds that transportation is not included in the student's IEP, and therefore, the district was not required, under IDEA, to provide that service. According to the 10th Circuit, services are to be provided to a student with a disability, in accordance with the student, IEP. In Sytsema v. Academy Sch. Dist. No. 20, 538 F.3d 1306, 50 IDELR 213 (10th Cir. 2008), the court has stated that the IEP is the written offer, and the court will only consider the written IEP, not verbal offers made by the school district. Here, the district admits that it offers bussing to students with an IEP, and if the parent accepts, and registers, for the bussing, that transportation will be provided to the student. Conversations with the district reviled that the district did not provide this service as an added service under the student's IEP, nor did the district enter into the amendment process in order to do so. Further, the district states that the IEP team had determined that the student was not eligible for transportation services during the regular school year. In this case, the Committee finds that bus service was an optional service offered to the parent and not a service the IEP team had determined was necessary for the student to benefit from their special education services.

The district further argues that missing two days of bus service is, at most, a "*de minimus* failure to implement the IEP", and not a denial of FAPE. The Committee notes that even if a failure to implement the IEP had occurred, the 10th Circuit has stated that "deviations do not amount to a clear failure" and "do not violate IDEA". (*L.C. and K.C. ex rel. N.C. v. Utah State Bd. Of Educ.,* 105 LRP 12668) (*Where slight deviations from one of the student's IEP provisions did not mean that the student's IEP was "clearly failing" and did not amount to a denial of FAPE*). The Committee acknowledges that, beyond the two dates in question, neither the parent, nor the district, indicated that the district failed to provide bussing services to the student at any other time during the school year, or during the ESY 2023 summer session. Therefore, the Committee agrees that such deviations would likely not be a violation of FAPE. However, it is also worth stating that the investigator, in this case, did not find that a denial of FAPE had occurred due to the two missed days of bussing service. She did, however, find a procedural violation and assigned corrective action accordingly.

Regardless, the Committee finds that because transportation services are not specified in the student's IEP, the investigator did err in finding that there was a violation due to a failure to implement the IEP and overturns the investigators finding for both the June 12, 2023, and June 26, 2023, incidents.

PARENT APPEAL

The following issue in this complaint has been addressed by the Appeal Committee:

ISSUE TWO: The USD #229, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to provide the parent with the IEP goal progress reports following the 2023 extended school year (ESY) Program.

The investigator found that a violation did not occur. In response, the parent argues that,

1. the investigator's conclusion "is flawed because Blue Valley did not offer or work on the category "Language" on 3 Annual Goals."

The parent argues that "Blue Valley violated IDEA by failing to provide progress on the Category of Language on 3 Annual Language to the student during the student's attendance of the district's extended school year (ESY)."

As noted by the investigator, 34 C.F.R. 300.320(a)(3) requires districts to include a statement in a student's IEP describing how the student's progress toward meeting annual goals will be measured and when periodic reports will be provided to the parent. In this case, the investigator found, and documents confirm, that the student's current IEP "required IEP goal progress reports at the end of each grading period, in this case, after June 29, 2023, when the 2023 ESY session ended." Documentation also shows that the student's IEP required two goals to be addressed between June 5, 2023, and June 29, 2023: reading and writing. Further, documents show that the parent was notified of this, and email correspondence between the parent and district directed the parent to the two goals (page 11 of the student's IEP) that the student would work on during the ESY 2023 summer session, as required by the student's IEP. Finally, the Committee finds that these are the same goals the district reported on, following the ESY 2023 session. Regarding a progress report for Category 3 Language, the Committee finds, and the student's IEP confirms, that this was not a goal addressed during the summer ESY session and therefore, a report was not required.

In conclusion, the Committee finds that the goals worked on during the ESY 2023 summer session where the goals indicated in the student's IEP. Further, the Committee finds that the district provided goal progress reports, as required, to the parent on the appropriate goals. Therefore, the Committee finds that the Investigator did not err in her conclusion on issue two and sustains the finding.

CONCLUSION – DISTRICT'S APPEAL

The Appeal Committee concludes that the investigator did err in her finding that, "a violation of special education statutes and regulations is substantiated for failing to provide transportation as a related service to the assigned school on two dates during ESY summer 2023 services". All corrective action related to issue one is reversed.

CONCLUSION – PARENT'S APPEAL

The Appeal Committee concludes that the investigator did not err in her finding that, "a violation of special education statutes and regulations is not substantiated for failing to provide the parent with the IEP goal progress reports following the 2023 extended school year (ESY) program." No corrective action is required.

This is the final decision on this matter. There is no further appeal. This Appeal Decision is issued this 25th day in August 2023.

APPEAL COMMITTEE:

Brian Dempsey: Assistant Director of Early Childhood, Special Education and Title Services,

Mark Ward: Attorney, Special Education and Title Services,

Ashley Niedzwiecki: Attorney, Special Education and Title Services,

Dr. Crista Grimwood: Education Program Consultant.

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES

REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #500
ON June 15, 2023

DATE OF REPORT August 1, 2023

This report is in response to a complaint filed with KSDE by USD 500 Teacher, ----------, on behalf of her student, ----------, a student receiving special education services in the early childhood program. For the remainder of this report, ---------- will be referred to as "the student." ---------- will be referred to as "the student's teacher," "the complainant," or "the teacher."

Investigation of Complaint

Doug Tressler, Complaint Investigator, spoke by telephone with the complainant on June 23, 2023.

On June 26, 2023, the investigator spoke by telephone with Dr. JaKyta Lawrie, Executive Director of the Wyandotte Comprehensive Special Education Cooperative serving USD 500.

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

- IEP for the student
- Class schedule for the student
- Email from District acknowledging the error.
- PWN with parent signature indicating offer of compensatory services.
- District produced chart showing how and when special education services are being provided to the student.

Background Information

The student is a preschool age student identified as developmentally delayed requiring speech language services only.

Issue Presented

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 teacher raised one issue.

Issue One

> Issue One: The district has failed to provide the special education services specified in this student's IEP.

Applicable Regulations and Conclusions

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.

Complainant's Position

In her complaint, the teacher alleges that the student did not receive the direct special education services required in the student's IEP between 5/4/2023 to 5/19/2023.

The complaint acknowledges that the student did receive the 15 minutes of special education service outside of the general education setting 2 times a week. This service was provided directly by the Speech Language Pathologists in a room separate from the general education.

The complainant alleges that the student did not receive the 30 minutes of special education service in a special education setting for 2 days each week.

The complainant argues that the district failed this student was not providing services and by failing to supervise the implementation of services for this student. The complainant argues that the district should be required to create a system of supervision within the district.

District's Position

The district acknowledges that not all of the services specified in the student's IEP had been provided beginning at the initiation of the IEP on 5/4/2023.

According to the executive director of special education for the district, the student's IEP states that the student is to receive 30 minutes of special education service in a special education setting for 2 days each week and 15 minutes of special education service outside of the general education setting 2 times a week.

The district states that it failed to provide the student with 30 minutes of special education services in a special education setting for 2 days a week.

The district argues that there is not a failure to supervise the implementation of services as evidenced by the district's prompt response following notification of the failure for this student. The district argues that if the teacher had informed the administration that the services had been missed, the district would have immediately remedied the situation.

Investigative Findings

On June 23, 2023, the investigator interviewed the complainant. In the interview the complainant stated that the service in the special education setting was never scheduled following the execution of the student's IEP. According to the complainant, the special education teacher failed to request or schedule the child for services in the special education room. By her own admission, the complainant, who was the general education classroom teacher for the student, noted that she also never contacted the special education teacher, the special education administration, the school principal or the parent with concerns or questions about the services. The complainant stated that she filed the complaint after the school year was over because she had been aware that the services never happened.

On June 26, 2023, the investigator interviewed the USD #500 Special Education Director. The director stated that she was unaware that the service had not been scheduled following execution of the IEP, and that none of the staff had contacted her with concerns. However, prior to the interview upon being notified of the complaint, the director stated that she immediately reached out to the parent and scheduled a meeting. In that meeting with the parent, held June 26, 2023, the director and the parent agreed to compensatory services during the summer of 30 minutes of special education service in a special education setting for 2 days each week, for a total of 120 minutes, the exact amount of time the student missed

during the school year as evidenced by the IEP developed on May 4, 2023 and the Prior Written Notice for compensatory services agreed to by the parent on June 26, 2023.

During the investigation, the investigator found that there was not an administrative error noted in the scheduling process. Further, the investigator found that the notice of meeting was properly provided to the parents, that the team listed on the IEP dated May 4, 2023 included the parents and all other required participants, and that the team reviewed the evidence with all appropriate members represented. Additionally, the prior written notice was complete and in both English and the native language of the parent and all procedural steps for including the appropriate team members were completed.

Finally, as evidenced by the attendance of the complainant at the May 4, 2023 IEP representing the role of general education teacher for USD500, the investigator finds that the complainant, as a member of the IEP team, was aware of, and partially responsible for, the student's schedule and knew that the services were not occurring but failed to report the error to any other staff or administration.

Summary and Conclusions

The investigator finds that the district failed to provide special education services in the special education setting between 5/4/2023 and 5/19/2023, for a total of 120 minutes, resulting in a violation.

However, since the initiation of this complaint, the district and the parent have held a meeting and agreed to make up the 120 missed minutes. The District has presented a prior written notice for the services agreed to by the parent. The District has submitted the prior written notice of this meeting as evidence of correction and the complaint investigator has reviewed the prior written notice and verified that the services offered match the services missed between May, 4 2023 and May 19, 2023.

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 #500 is directed to take the following actions:

1) Submit to Special Education and Title Services (SETS), within 10 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) The prior written notice of services agreed to in the meeting with the parent and the service log demonstrating that the compensatory services have been completed which USD #500 submitted to the investigator as evidence shall serve as USD 500 notification to SETS that a plan for the implementation of compensatory special education services to be delivered to the student named in this complaint has been agreed to, approved by the investigator and complied with by the district.
3) Further, USD #500 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).

Investigator

Doug Tressler
BS Elem Ed, MS Sp Ed, MS Ed Admin
Complaint Investigator

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.

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, 2023

DATE OF REPORT JUNE 15, 2023

This report is in response to a complaint filed with our office by ----------, on behalf of her son, ----------. Hereinafter, ---------- will be referred to as "the student." ---------- will be referred to as "the parent." The complaint is against USD #259, Wichita Public Schools, hereinafter referred to as "the school district" or "the district.

Investigation of Complaint

The complaint investigator spoke with the parent on JUNE 7, 2023, by telephone to gather any additional information the parent would like to provide about the complaint.

Also, on JUNE 8, 2023, the investigator spoke by virtual conferencing with Dr. Erica Shores, Morgan Nance, Principal, and Jordan Riley Security Guard for USD #259, regarding the allegations in the complaint.

The investigator provided both parties the opportunity to submit additional information in writing regarding the complaint and requested specific documentation from the school district. In response, the investigator received email communications from the school district providing requested documents, additional information, and a written response to the complaint.

In completing the investigation, the investigator reviewed the following:

- IEPs and Related Documents
    - IEP dated 3/31/2023
        - BIP included in the IEP
- Related Documents and E-mails:
    - USD #259 Response to 23FC259-013
    - USD#259 Emergency Safety Intervention (ESI) report
    - Disciplinary Action form

Background Information

This investigation involves a middle school student. The student has been determined eligible for special education. The student has an IEP with a behavior intervention plan (BIP) and currently participates in all classes with special education support.

Issues Presented

In the written complaint, the parent presented one issue:

- "IEP Behavior Plan was not followed. Per Plan it states when in crisis to observe from a safe distance. (The student) will be given additional processing time when given a direction even when denying the request or in crisis".

ISSUE ONE: The school did not implement the IEP as written, specifically the school failed to implement the Behavior Intervention Plan as written in the most recent IEP dated 3/31/2023.

Positions of the Parties

It is the position of USD #259 that it did not violate state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA) and did not fail to implement the IEP by following the Behavior Intervention Plan (BIP).

Parent contends that the steps detailed in the Behavioral Intervention Plan (BIP) in the IEP are explicit and sequential steps that are intended to be followed in the order written in the IEP.

In the written complaint the parent states:

- On 4/14/23 at approximately 12:01 pm, (the student) ran out of a room the door hitting a security guard who was standing in front of the door. When (the student) ran out the door, the security guard grabbed (the student) by the arm instead of observing from a distance. The actions from the security officer not following (the student's) IEP led to (the student) having to be restrained by 3 security guards an put in seclusion. This event has led up to criminal charges.
- Met with the principal and watched the video and asked her if it was standard practice to grab children by the arm as they are running, and she said "yes".

Applicable Regulations and Conclusions

As required by 34 C.F.R. §300.101(a), each State must ensure that each eligible child, residing in the State is provided a free appropriate public education (FAPE). Further, 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 §300.320 through §300.324.

Investigative Findings

The following findings are based upon a review of the documentation provided and the phone interviews with parent and district:

1. The student is a student who has been determined eligible for special education and whose parents have provided written consent to the provision of special education services.
2. Per the district response: In the Student's BIP that was in effect on 4-14-23, the Operational Definition of Target Behavior states, "(Student) engages in verbal outbursts sometimes in response to peers that disrupt the classroom (by history). Examples include offensive language towards staff and peers, and making threats. The IEP team believes this is caused by a response from receiving directions by staff regarding (the student's) phone; vulgar/sexually explicit statements (by history); and bullying/name calling (by history)." (the student) also "engages in physical aggressive behavior including physically assaulting peers or staff; and property damage (by history).
3. The IEP included a behavior intervention plan which required several supports and strategies be used with the student.
    - (The student) will have access to one:one adult during core academic settings.
    - Reduced number of staff that approach (the student) when in crisis.
    - Instructions will be given one step at a time.
    - Allow (the student) to call parents when requested- listen to (the student's) verbalizations.
    - Give additional processing time when given a direction even when denying the request or in crisis. (The student) will be given frequent feedback from adults to reinforce appropriate verbalizations with adult attention. (The student) will be afforded the opportunity, when appropriate, to act as a leader or helper in the class so that (the student) may receive appropriate peer attention. (The student) classmates will be coached in ignoring inappropriate comments that do not impact (the student's) safety or others.
    - When in crisis, give one direction at one time from one person.

- When in crisis, observe from a safe distance.
- When (the student) engages in non-appropriate behaviors that do not impact (the student's) safety or others (the student) will be ignored.
- Staff can encourage (the student) that (the student) has school and home goals - 2$ a day from home if there are no calls home from school.

4. The BIP included the following "steps to follow when examples of Target and/or Peak Behavior occurs."

- Target or Peak Behavior example
    - In any escalated situation eloping from the classroom, wandering the halls, refusal of staff members requests, voice escalation, inappropriate communication.
- Response to Behavior (during/after/de-escalation/reflect)
    - In the appropriate area allow (the student) to call home, allow (the student) space to process and decompress, only one person should engage in a calm voice. Allow (the student) to go to a preferred space that is acceptable and will keep (the student) safe.

5. The District's position is that the strategies listed in the BIP include consideration for student safety
    - Per District response "The BIP also lists that staff should ignore behaviors that do not impact (the student's) safety or that of others, but clearly, per the ESI documentation and Principal's narrative account, after the Security Guard touched the Student's arm to get (the student's) attention and to make sure (the student) was okay and (the Student) attacked him, the Officer's safety was impacted, and it was also possible that the other two students there could be hit. In addition, the school believed the Student's behavior at that point rose to the level of behavior that presented a reasonable and immediate danger of physical harm to others, and therefore met the requirements of an ESI being applied at that time."
6. The District implemented Emergency Safety Interventions (ESI) and complied with the ESI documentation/notification process.
    - Per the District response "The school followed the student's IEP and BIP and also correctly applied the ESI, in this case when the student presented a reasonable and immediate danger of physical harm to others with the present ability to effect such physical harm, and ended its use when the immediate danger of physical harm ceased to exist, following all required protocols. For this reason and the reasons explained above regarding the school's response to the incident on 4-14-23, USD #259 believes that the school did not fail to implement the student's IEP nor his BIP, but moved quickly and carefully between the student's IEP/BIP and appropriate use of ESI to afford this student FAPE as well as keep everyone in the school safe, all the

while keeping Parents informed and meeting the student's needs at each point of the incident in light of (the) circumstances."

- Per the Disciplinary Action form "(the student) exited the cafeteria, throwing open the doors and hitting a security guard and several students with the doors. BOE Riley reached out to (the student) and touched (the student's) arm, attempting to get (the student's) attention. (The student) turned around and attacked Riley, punching him approx. 11 times. The other 2 guards came out and helped restrain (the student). (The student) kicked and scratched at the security guards but was ultimately able to be moved to Time Away where (the student) was placed in seclusion. While in seclusion, (the student) used (the student's) shoe to beat on the plexiglass, breaking it partially out of the door. (The student) stated to Spatz and Riley that (the student), "is going to bring a gun to school and shoot up the school and Officer Riley would be (the student's) first target."

Analysis and Conclusions

The allegation at issue is that the student's IEP was not implemented because staff did not follow the BIP during an incident on 4/14/23.

The IDEA regulation 34 C.F.R. §300.17(d) requires that special education and related services are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.F.R. §300.320 through §300.324. Additionally, while the IDEA does not specifically state that the IEP must be implemented as written, it does say that services should be available in accordance with the child's IEP. Under the IDEA, 34 C.F.R. §300.323(c)(2) states that each agency must ensure that, "as soon as possible following development of an IEP, special education and related services are made available to the child in accordance with the child's IEP."

It is the position of the district, that the behavior in question was outside the definition of the target behavior included in the BIP section of the IEP required to trigger the steps outlined in the IEP and that the immediate concern for student safety reflected in the ESI report support the staff's action in this instance.

The IEP does not detail a "step-by-step behavior intervention process" that includes "staff observing from a distance" rather the BIP includes "staff observing from a distance as one possible strategy or support that district staff could implement in the instance of a behavioral escalation.

The BIP includes allowance for safety of (the student) or others as a condition which must be meet prior to use of interventions:

> "When (the student) engages in non-appropriate behaviors that do not impact his safety or others (the student) will be ignored."
>
> "(The student) will be given frequent feedback from adults to reinforce appropriate verbalizations with adult attention. (The student) will be afforded the opportunity, when appropriate, to act as a leader or helper in the class so that he may receive appropriate peer attention. His classmates will be coached in ignoring inappropriate comments that do not impact his safety or others.

The Disciplinary Action form and the interview with the Security Guard, Jordan Riley, indicates that the student was escalated, (the student) forcibly pushed open a door hitting a security guard 11 times, the student then forcibly opened another door hitting a student. The security guard positioned himself between (the student) and the student who had been hit by the door. In this position, the security guard was also blocking (the student) from exiting into a bus loading zone where traffic posed a risk to (the student) while in an escalated state.

In this instance, the school staff was regulating the student's conduct and providing for the safety of other students in the immediate area in accordance with Emergency Safety Interventions K.A.R 91-42-2(3).

For the reasons stated above, this investigator finds that the allegation of a violation of IDEA regulations, specifically the failure to implement the IEP as required by 34 C.F.R. §300.323(c)(2) and §300.17(d) *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.

Doug Tressler
BS Elem Ed, MS Sp Ed, MS Ed Admin
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 #207
ON FEBRUARY 01, 2023

DATE OF REPORT February 28, 2023

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." ------ will be referred to as "the student's mother," "the complainant," or "the parent."

Investigation of Complaint

Jana Rosborough, Complaint Investigator, spoke by telephone with the parents on February 3, 2023. On February 3, 2023, the investigator also spoke by telephone with Dr. Diana Greer, Director of Special Education for the district. The investigator spoke with Melinda McConnell, MacArthur Elementary School Nurse, on February 16, 2023, and Renee Collins, paraprofessional, on February 17, 2023.

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

- Records related to a move-in meeting for the student dated August 10, 2022.
- Interim IEP for the student dated November 15, 2022.
- Prior Written Notice dated November 16, 2022.
- Physician Letters regarding the student.
- Records related to the Initial Evaluation Meeting on January 23, 2023.
- Draft Initial IEP for the student dated January 23, 2033.
- Progress Goal updates for the student from October 2022 and January 2023.
- Nurse-Student Attendance sheet.
- Maxim Contract-Billing Agreement Email Thread.
- Ready Willing and Able letter and related documents dated January 26, 2023.
- Student Record Request.
- Draft Health Care-Crisis Plan for student dated January 23, 2023.
- Information on coverage for 1:1 paraprofessional and school nurse absence, provided by school.
- 1:1 paraprofessional training certificates and records of additional trainings.
- Epilepsy training records for school nurse and school psychologist.

- Student medication administration documentation dated September 2, 2022.
- Enrollment numbers for MacArthur Elementary School.
- Enrollment numbers for the student's primary classroom and other classes where services are provided including adults and students.
- Map of MacArthur Elementary School with student's classrooms, school nurse office, and pickup/drop off locations noted.

Background Information

This investigation involves a three-year-old boy who is enrolled in pre-kindergarten in his neighborhood school. The student has multiple disabilities and receives twelve hours of private nursing care from a home health nurse daily.

Issue

In her written complaint, the parent presented one issue.

Issue One

> The IEP Team did not agree to continuing support from the home health nurse at the school which denied my child's access to a free and appropriate public education (FAPE).

Applicable Statutes and Regulations

If during the academic year, an exceptional child who has a current IEP transfers from a school district in another state to a Kansas school district, the Kansas school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the Kansas school district either adopts the transferred IEP, or conducts an evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child. K.S.A. 72-3429(g)(2).

The parents of exceptional children shall have the right to: consent, or refuse to consent, to the evaluation, reevaluation, or the initial placement of their child and to any substantial change in placement of, or a material change in services for, their child. K.S.A. 72-3430 (b)(6).

Parent's Position

It is the position of the parent that the IEP offered by the district does not meet the needs of the student (FAPE).

District's Position

It is the position of the district that the IEP offered to the parent meets the needs of the student (FAPE).

Investigative Findings

The student, age 3, was born at 24 weeks, 2 days gestation; he has a history of bronchopulmonary dysplasia (chronic lung disease of prematurity), spastic diplegic cerebral palsy, developmental delay, epilepsy with Lennox-Gastaut syndrome, multiple small bowel perforation therefore ileostomy with resection of approximately 30 cm of the bowel, and rickets. The student has a g-tube, hearing aids, glasses, bilateral ankle-foot orthoses, and utilizes a wheelchair for longer distance mobility in the educational environment with assistance from an adult to navigate the wheelchair. The student receives a daily water push at 9:00am and daily medications at 10:00am from the school nurse. The student also receives Occupational Therapy (OT), Physical Therapy, Speech, Services for the Deaf and Hard of Hearing, and early childhood special education.

The student entered the district in August of 2022 with an Individualized Education Program (IEP) from his prior district. The IEP from the prior school district did not include the private home health nurse as a related services provider in the IEP but did note in the December 6, 2021, meeting notes that the private home health nurse would be participating in the student's care during the day in consultation with the school team. It is also noted in the prior district IEP that the student's disability directly impacts his independence for self-care and academic tasks as well as his safety and mobility on campus as they relate to his IEP.

Before the first day of the 22-23 school year, a move-in meeting was held on August 10, 2022. At that meeting in addition to consent for an initial evaluation, the student's needs were discussed in relation to his last school setting. It was based on that discussion that the student's private home health care nurse was permitted to attend school with the student during the evaluation period as data was collected.

On November 15, 2022, the IEP team met to review the results of the initial evaluation. During this meeting, the parent provided letters from the student's physicians and the exceptional family member program to support the need for the private home health care nurse to attend school with the student. Based on the presentation of the letters, the district requested an extension of the evaluation period until January 23, 2023, to review and consider the information provided by the parent.

Between the meeting on November 15, 2022, and the meeting on January 23, 2023, the school team, led by Candice Ott, school psychologist, made contact with physicians who had provided letters to the parent in support of the private home health care nurse attending school with the student. The summations of the conversations with the physicians were provided during the meeting on January 23, 2023, to the parent. The school nurse did not participate in the calls.

On January 23, 2023, a meeting was held to review the results of the initial evaluation, which was a continuation of a meeting held on November 15, 2022. At the meeting, the team agreed that the student is eligible for special education under the primary category of Multiple Disabilities and the secondary category of Hearing Impairment. The district also presented data about the use of the private health care nurse.

Data on the use of the private home health care nurse was collected by the district from August 16, 2022, to January 21, 2023. During the data collection period, the attendance sheet indicates that the private home care nurse was absent at least 14 times while the student was in attendance at school with no substitute nurse attending in the private home health nurse absence. The data collection also indicates that the home health nurse was utilized approximately 16 times during the first four days of school assisting with toileting, positioning, and assisting the student out of the car. After that time, the district indicates that the paraprofessional has performed these duties. It should be noted on the data collection sheet that there is no notation on how "utilized" was defined and a subsequent attempt to gain clarification from the district was unsuccessful. The report and surrounding documentation do not indicate if "utilized" included any monitoring of the student without physical touch occurring or if the private home health care nurse was asked to participate in the collection of engagement with the student.

The parents were presented with a draft initial IEP on January 23, 2023 that did not include services from the private home health nurse during the school day. The district stated that the student's medical needs were met by both the school nurse and the paraprofessional. The parents did not consent to the IEP due to the lack of inclusion of the private home health nurse services within the school day.

A health care crisis plan was also presented to the parents on January 23, 2023. The plan notes that if the school nurse is not available to administer medication to the student by 10:15am, then the parent should be called to school to administer the medication. The school nurse, Melinda McConnell, noted that while other adults, including the paraprofessional working with the student were briefed on emergency responses, that classroom conditions coupled with the seriousness of medical situations could prove complicated and traumatic for all involved should a g-tube button get pulled out or other medical emergencies occur before care could arrive.

Summary and Conclusions

The district rests its supposition that the private home health nurse is not needed for the support of the student during the school day on two separate but related arguments. The first is that there is a registered nurse in the building at all times who is able to meet the student's health needs and is also available in an emergency. The second is that the private home health nurse was minimally used, if at all, during the initial evaluation period once the school nurse and the paraprofessional were trained on key facets of the student's care. The district notes that the private school nurse did not attend school every day with the student during the initial evaluation period nor was there record of the home health nurse intervening and providing necessary, immediate care to the student during his attendance at school. The district also asserts that the student's physicians were unable to fully back their recommendations for the need of a private home health nurse for the student once the student's care at school was explained - the school nurse and paraprofessional.

The parents reject the district's argument based on medical professionals both within and external to the district have expressed support for the private home health care nurse attending school with the student due to his complex medical needs. As stated in the investigative findings, the school nurse expressed reservations about the medical emergency response in the classroom by others, even if trained, due to the serious complexities of what could occur.

The Individuals with Disabilities Education Act (IDEA) act requires that free appropriate public education (FAPE) be provided to each student covered by the act. FAPE is defined as special education and related services that are provided at public expense, under public supervision and direction, and without charge, including related services to allow for a child with a disability to benefit from special education.

"School health service and school nurse services" are services designed to enable a child with a disability to receive FAPE as described in a student's IEP. School nurse services are "services provided by a qualified school nurse" and "school health services are "services that may be provided by either a qualified school nurse or other qualified person." 34 CFR 300.34 (c)(13). A child who is medically fragile and needs school health services or school nurse services to receive FAPE must be provided such services, as indicated in the child's IEP. 71 Fed. Reg. 46,574 (2006).

However, when an IEP requires a nurse to provide a service, districts should plan to have coverage during absences and interruptions in schedules. Having parents come to the school to provide a service necessary for a student's health and safety could be an implementation failure, even if requested by the parent. In re: Student with a Disability, 71 IDELR 47 (SEA SD 2017). Accordingly, if an IEP contains a provision agreeing to allow a parent (at the parent's

request) to come into the school to provide a service to the parent's child, the IEP should include a "back-up" plan that will be implemented in the event the parent is unable or unwilling to provide the service in any specific instance. Furthermore, if there is conflicting and incomplete information around the student's medical condition, districts may seek an independent medical reevaluation of the student.

While the above information is germane to the development of the IEP itself, it does not impact what is outlined in the law as parents' options when disagreeing with the initial provision of services. The IEP offered by the district is the initial Kansas offer of special education and related services. The parents have the right to reject the proposed IEP and may either file for due process or request mediation to resolve the disagreement in the initial provision of services offered by the district. Parents may also request an independent educational evaluation at public expense as an alternate or additional step to the options listed above.

Corrective Action

Information gathered during this investigation has substantiated compliance with special education statutes and regulations on the issue presented in this complaint.

While no corrective action is required due to noncompliance, and no action is required from either party, a recommendation for possible next steps is made. It is strongly encouraged that the parent seek mediation or due process to resolve issues related to the district's proposed offer of FAPE and or request an independent evaluation from the district at public expense by stating that request to the district. K.A.R. 91-40-12.

Investigator

Jana Rosborough

Complaint Investigator

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.

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 11, 2023

DATE OF REPORT May 12, 2023

This report is in response to a complaint filed with our office by ------ on behalf of ------. For the remainder of this report, ------ will be referred to as "the students." ------ will be referred to as "student one." Oliver will be referred to as "student two." ------ will be referred to as "the parent."

Investigation of Complaint

On April 12, 17, 25, and 28, 2023, the complaint investigator spoke via telephone with Deb Chappell, Assistant Director of Special Services for USD #233 and the District's 504 Coordinator. The investigator spoke by telephone with the parent on April 19, 2023.

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

- IEP for student one dated April 12, 2022
- IEP for student two dated April 12, 2022
- Email exchange dated July 20, 2022 between the building principal and the parent
- Email exchange dated July 25, 2022 between the building principal and the parent
- Email exchange dated July 26, 2022 between the building principal and the parent
- Email exchange dated July 27, 2022 between the Executive Director for Elementary Education and the building principal
- Email exchange dated January 26, 2023 between the parent and the Executive Director of Special Services
- Email exchange dated January 27, 2023 between the Assistant Director of Special Services and the parent
- Email dated January 31, 2023 from the Assistant Director of Special Services to the parent
- Email dated February 1, 2023 from the parent to the Assistant Director of Special Services
- Emails dated February 2, 2023 from the Assistant Director of Special Services to the parent

- Student Collaboration Team Meeting Notes dated February 7, 2023
- Email dated February 13, 2023 from the parent to the building principal
- IEP for student one dated April 3, 2023
- IEP Progress Report for student one covering the period of May 25, 2022 through March 31, 2023
- IEP for student two dated April 3, 2023
- IEP Team Meeting Notes dated April 3, 2023
- Prior Written Notice for Identification Initial Services, Placement, Change in Services, Change of Placement, and Request for Consent dated April 3, 2023
- IEP Progress Report for student two covering the period of May 25, 2022 through May 31, 2023
- PC Pals assignment spreadsheets for school years 2021-22 and 2022-23
- Elementary Progress Report for student one for the 2022-23 school year

Background Information

This investigation involves two 8-year old siblings who are enrolled in the second grade in their neighborhood school. The third of this set of triplets is also enrolled in the same school. There are two other older children in this family.

Both students currently receive 30 minutes of special education services from a speech/language pathologist twice a week targeting articulation skills.

Issues

In her written complaint, the parent raised eight issues. These issues were discussed with the parent during a telephone call of April 19, 2023. During that telephone call, the parent agreed to the consolidation of two duplicative issues (1 and 6) into a single issue (1). The investigator sent an amended list of complaint issues to the parent for approval on April 19, 2023.

On April 20, 2023, the parent sent an email to the investigator stating:

> *"We are okay with 1-6 [as restated from the original] just not explicit yet on 7 to 8 without another look."*

Later on April 20, 2023, the parent sent the investigator another email stating:

> *"...simply scrap #7 and #8."*

The amended complaint contains five issues.

Issue One

The district failed to implement speech/language related service recommendations made by an outside agency.

Parent's Position

According to the parent, she obtained an outside evaluation of student one through a local hospital. The parent contends that the district did not follow the recommendation of the outside evaluator to provide the student with an immersive language program and one-to-one special education services with a district speech/language pathologist. The parent asserts that the student has instead been served in a small group with one or two other students. One of those other students in the group has been student two, a situation that the parent believes has been detrimental to the progress of both students.

District's Position

The district asserts that while the outside evaluation was considered, the district was under no obligation to implement recommendations made by the outside evaluator.

Applicable Statutes and Regulations

At 34 C.F.R. 300.502(c), federal regulations state that IEP teams are required to consider parent-initiated evaluations presented to the team by a parent. However, the IEP team is not obligated to adopt or implement any of the recommendations made by an outside evaluator.

Investigative Findings

The parent obtained a parent-initiated evaluation of student one through Children's Mercy Hospital on December 13, 2022. (Student two had been evaluated through the same hospital on October 13, 2021.) According to the evaluation report, the evaluation was conducted due to parental concerns about the student's difficulty with reading and/or writing.

The report documents diagnoses of "dyslexia" and "articulation disorder." The evaluator recommended that student one "continue articulation therapy through the school as warranted."

The section of the outside evaluation report entitled "Attention Accommodations/Recommendations" contains a nineteen-item list. Among that list is the following statement:

"One-on-one tutoring."

The parent emailed a copy of the evaluation report to the school counselor on December 13, 2022. On January 5, 2023, the counselor forwarded the report to the Speech Language

Pathologist who had been serving the student. The counselor also forwarded the report to other members of student one's IEP team on January 6, 2023.

After receiving the outside evaluation report, the school psychologist asked student one's general education teacher to complete an MTSS referral regarding the student. MTSS (Multi-Tiered System of Supports) is the building-wide framework of supports used by the district to provide general education interventions to help students achieve more successfully. Under MTSS, interventions can be developed, progress monitored, and data collected in order to make decisions regarding the need for more intensive interventions including referral for special education evaluation.

The general education teacher completed the referral form, and an MTSS meeting regarding student one was held on February 7, 2023. The MTSS team reviewed the outside evaluation report and put in place for student one a "Tier 3" intervention - intense, individualized interventions in the area of reading with the intent of monitoring the student's progress under those interventions. Specifically, the student was placed in three phonics intervention groups. The team also discussed the possibility of recommending a referral for a special education evaluation if adequate progress was not made at the Tier 3 level.

At the time this complaint was received, the student was still receiving MTSS Tier 3 interventions to determine if her reading needs can be met through general education interventions. The school psychologist and the parent are scheduled to meet to discuss the student's progress. The student has progressed from the "high risk" category during fall and winter assessments to the "some risk" category during the spring assessment.

IEP team meetings for student one and student two were held consecutively on April 3, 2023. The IEP team meeting for student two occurred first. Both the parent and the student’s father attended the meeting for student two. However, the parent was unable to stay for the IEP meeting for student one, but the students' father did attend. During the IEP team meeting for student two, the parent proposed to the team that student one should receive 1:1 speech service at school and stated that the IEP for student one should state that student one has a diagnosis of Dyslexia.

During the IEP team meeting for student one, the speech/language pathologist recommended that the team consider reducing services from 30 minutes twice a week to twenty minutes twice a week because student one had made significant progress with regard to her goals. The student's father was not comfortable with the proposed reduction, so the team agreed to continue services at the 30-minute level.

The IEP team for student one declined to adopt the parent's proposal that she receive 1:1 speech service at school because the student was making adequate progress on her goals within a small group setting, and data did not support the need for one-on-one speech service.

Further, the recommendation in the Children's Mercy report was for "one-on-one tutoring" - a recommendation unrelated to the student's speech services.

The team did agree to the parent's proposal to document student one's diagnosis of Dyslexia on her IEP and included the following statement in the "Relevant Medical Information" portion of the "Special Considerations" section of the student's April 3, 2023 IEP:

> *"[Student one] underwent an evaluation at Children's Mercy Hospital on December 13, 2022 and received a diagnosis of dyslexia."*

No evidence was presented to show that the parent made any additional proposals related to the provision of an immersive language program for the student or any other services related to Dyslexia.

At the conclusion of the April 13, 2023 IEP team meeting for student one, the student's father gave written consent to the special education placement and services outlined in a prior written notice document provided by the district. The following statement is included in the "Other Factors Relevant to the Proposal or Refusal" section of the form:

> *"Parents requested that [student one] have 1:1 instruction for speech. However, parents agreed to the current proposal as reflected in [student one's] IEP dated 04/03/2023. Parents will ask for an amendment IEP in the future if they want to request to update programming."*

Summary and Conclusions

In December of 2022, the parent provided the district with a copy of an outside evaluation of student one obtained by the parent. That report was sent to the building counselor who shared the information with the members of the student's IEP team. The school psychologist subsequently asked the student's classroom teacher to refer the student to the building level MTSS team. That team proposed the implementation of Tier 3 interventions for the student beginning February 7, 2023.

At the student's annual IEP team meeting on April 13, 2023, the parent requested that the district follow the recommendations of the outside evaluation and provide the student with one-on-one speech support. The team discussed that request but opted to continue to provide speech services in a small group setting, noting that the student had made good progress on her goals under that model. The team also noted that the outside evaluation report had recommended "one-on-one tutoring" but did not specifically recommend one-on-one speech services. The student's father gave written consent to the district's plan to continue services under the small group model.

While the district was required to consider both the parent's request and the outside evaluation report provided by the parent, the district was not obligated to provide one-on-one speech services. The district acted on the outside evaluation report by referring the student to the MTSS team and beginning the process of developing interventions to address needs identified in that report. The district acknowledged the parent's request but opted to continue to provide the student with services under a model that had proven effective for the student as shown by her attainment of IEP goals. The district provided the parents with prior written notice of the team decision. A violation of special education statutes and regulations *is not* substantiated on this issue.

Issue Two

The district failed to honor parental requests regarding general education classroom placement for the students.

Parent's Position

It is the position of the parent that because two of the triplets are being served under IEPs, the district is obligated to comply with the parent's request to assign all three children to a single classroom teacher of her choosing. The parent states that a specific request to have all of the triplets placed in the same classroom with a specific classroom teacher for the 2022-23 school year was denied and the parent was forced into a compromise wherein two children were placed in one classroom, the third in another. The parent states that she will not allow the children to be separated for the 2023-24 school year.

District's Position

The district contends that decisions regarding the general education classroom placement for the students are made at the discretion of the district and are not governed by special education statutes and regulations. However, the district asserts that the parent's request was considered, and a decision was made to place two of the triplets in one classroom rather than assigning each child to a different teacher.

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)).

"Educational placement" means the range or continuum of special educational settings available in the district to implement a student's IEP and to the overall amount of time the student will spend in the general education setting. The "placement" of a special education student refers to the educational program serving the individual student and not the physical classroom location where that program is implemented.

As long as the IEP is substantively appropriate, a student has no right to a specific individual as a teacher or provider. (See In re: Student with a Disability, 123 LRP 2110 (SEA NV 11/10/22.) Generally, the IDEA's FAPE mandate, the FAPE requirements of Section 504, and the anti-discrimination provisions of Section 504 and Title II of the ADA, don't obligate a district to provide a student a preferred program teacher. In re: Student with a Disability, 116 LRP 47989 (SEA ND 11/15/16), the state Department of Education clarified that the IDEA does not provide parents the right to demand a particular teacher, paraprofessional, or methodology.

While districts are required to include parents in decision-making regarding special educational placement, decisions regarding general education classroom assignments are generally made outside of the IEP team process. While a parent may express a preference to have their child assigned to a particular general education teacher, there is no legal special education requirement for a district to honor that request.

Investigative Findings

On July 20, 2022, the building principal sent out an email to all parents regarding enrollment for the coming school year. The parent replied that same day stating that she wanted a 15 minute Zoom with the principal to talk about class assignments for the triplets as, "they may all want in 1 room." The principal replied via email on July 25, 2022 stating:

> *"In regards to the class placements, we currently have them all in separate classrooms as we typically do not place siblings in the same class. Last year's teachers worked tirelessly to form the classes so that they would best meet the needs of all of the students and would be a good fit. I would rather not change them and place them all in one classroom this year due to this. If there are major concerns, please let us know."*

According to the district, the triplet's first grade teachers had recommended that they be split into different classrooms. No statement was included in the April 2022 IEPs for students one and two regarding a need for the students to be enrolled in the same classroom.

The parent sent another email to the principal on July 25, 2022, stating that all three of the triplets needed to be placed the classroom of a specific second grade general education

teacher because "that works best." The parent also asked for the telephone number for the superintendent and stated that she would "100% be not altering my request."

On July 26, 2022, after being unable to speak with the parent by telephone, the principal sent an email to the parent. In that email, he stated:

> *"We would love to come up with a solution that would work for [the triplets]! In the last phone message that you left this morning, it looks like you are hoping to have 2 of your children in one class and then 1 in another. We would love to work to accommodate your request. Can we get some feedback from you as to what you feel is best for [the three children] as far as which two of your children would be best placed together? In regards to teachers, although we don't take specific teacher requests, we will definitely work to make sure that the two teachers are close to each other in proximity and are able to communicate well with you and we will take your advice into the consideration process. I have no doubt that the teachers in 2nd grade will strive to meet the needs of your children next year."*

The principal was subsequently able to speak with the parent by telephone on July 26, 2022. The principal asked the parent if she would be willing to come to the school to speak with him and the school counselor. The principal reiterated that he would be happy to help accommodate having two children in one class and one in another. The principal asked the parent which children would work best together in one class. The parent was upset that the principal would not agree to place the students with the specific teachers that she wanted and told the principal that it wasn't a good idea for them to meet because she was contacting the superintendent and was planning to "go the legal route." Following this conversation, the principal emailed the Executive Director for Elementary Schools to inform her of the parent's concerns.

The parent then contacted the executive director by telephone and asked that student one and her sister be placed in one classroom and student two in a separate classroom. The parent also requested that the students be placed in classrooms with two specific general education teachers.

The parent's request regarding the general education classroom assignments for the 2022-23 school year was honored. On February 13, 2023, the parent sent an email to the building principal asking that all three children be placed in the same classroom for the 2023-24 school year. No decision has yet been made by the principal regarding that request.

Summary and Conclusions

While the parent had initially requested that all of the triplets be assigned to the same general education classroom with a particular classroom teacher for the 2022 – 2023 school year, the parent and the district ultimately agreed to assign two children to one classroom and a third to another.

No recommendation regarding the general education classroom assignments of these students was made by their IEP teams. Special education statutes and regulations do not mandate a district to provide a preferred special education program provider nor do they require a district to comply with a parent's request for assignment of their child to a particular general education teacher or classroom. A violation of special education statutes and regulations ***is not*** substantiated on this issue.

Issue Three

The district failed to honor the parent's request for a one-to-one meeting with the Assistant Director of Special Education.

Parent's Position

The parent asserts that she had made an appointment to meet one-on-one with the Assistant Director of Special Education to discuss her concerns. However, while she and the assistant director were meeting, Chief Counsel for the district interrupted the meeting to introduce himself. It is the parent's position that this disruption reflected a lack of respect on the part of the district for her rights as a parent.

District's Position

It is the opinion of the district that the parent's allegations do not constitute a violation of special education statutes or regulations.

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).

However, special education statutes and regulations do not establish specific requirements for meetings between parents and district staff that are held for the purpose of soliciting or sharing information and which do not result in any decision-making regarding special

education services for a child. Special education statutes and regulations do not establish any requirements regarding "proper etiquette" for such meetings.

Further, special education statutes and regulations are not applicable to meetings held to discuss possible Section 504 violations. Allegations regarding violations of Section 504 are investigated by the Office of Civil Rights. Questions regarding violations of Section 504 may be directed to the Kansas City Office for Civil Rights - U.S. Department of Education at the following address:

One Petticoat Lane
1010 Walnut Street, 3rd floor, Suite 320
Kansas City, MO 64106
Telephone: 816-268-0550
FAX: 816-268-0599; TDD: 800-877-8339
Email: OCR.KansasCity@ed.gov

Investigative Findings

On January 26, 2023, the parent sent an email to the Executive Director of Special Services for the district requesting a meeting to discuss violations of Section 504 with regard to the students' older sister who is enrolled in a neighborhood middle school. The executive director responded to the parent via email on January 26, 2023, copying the Assistant Director of Special Services who is also the 504 coordinator for the district.

The assistant director responded to the parent via email on January 27, 2023, providing contact information. The parent wrote back to the assistant director stating that she would "personally prefer a face to face" meeting and noting that the parent would be meeting with the Executive Director of Elementary Education on February 15, 2023.

The assistant director wrote back to the parent on January 31, 2023 stating:

> *"I have spoken with [the executive director of elementary education] and since you already have an appointment with her, we felt it would be most efficient for me to simply join this meeting so that we can address all of your concerns at one time..."*

On February 1, 2023, the parent sent an email to the assistant director stating:

> *"I have GAD [generalized anxiety disorder] and that is overwhelming, especially meeting with a stranger, would prefer to just schedule it with [you] before Spring break with you [sic]. Thanks in advance for the adaptations."*

The assistant director responded to the parent's email on February 2, 2023 offering options for meeting times and asking the parent to call the assistant director. After the parent called the assistant director, the assistant director sent the parent an email on February 2, 2023 writing:

"I understand that the purpose of the meeting is to discuss disability based discrimination that you believe is occurring at school...You mentioned that you would like to make a formal complaint to the district regarding discrimination you feel occurred. I wanted you to be aware that you can file a district complaint with...Staff Counsel for [the district]. You can call the Education Center...and ask to speak with him if you would like. He would be happy to assist you. Another option would be for me to invite him to our meeting on February 8th so that you can share your concerns with both of us at the same time. This is entirely up to you as I don't want you to feel uncomfortable. I have also attached to this email a copy of your parent's rights under 504...

During our conversation you requested an initial evaluation to determine if [the students' older sibling] is eligible for special education. You had some questions about the process that the school district is legally required to follow. In case it is helpful for you, here is a link to the Kansas Special Education Process Handbook....Chapter 3 provides information on Initial Evaluation and Eligibility. If you are concerned that any information I gave you today about initial evaluations for special education is incorrect, you can contact [general counsel at the Kansas State Department of Education] ...I have notified [the middle school] that you have requested an initial evaluation to determine if [the students' older sibling] is eligible for special education. They will be in contact with you within 15 days to provide you with a prior written notice requesting your signed consent to conduct the evaluation...."

No evidence was provided by the district to show that the parent agreed to the inclusion of counsel for the district in the parent's February 8, 2023 meeting with the assistant director.

According to the parent and the assistant director, counsel for the district interrupted the meeting between the parent and the assistant director on February 8, 2023 to introduce himself. The parent told counsel that he had "violated [her] consent to be in the room," and counsel left the room.

Summary and Conclusions

While special education statutes and regulations establish requirements regarding team meetings held for the purpose of making decisions regarding the provision of FAPE to exceptional students, those requirements do not apply to the type of meeting identified by the parent under this issue. While, during the meeting, there was discussion of a parental request for referral for special education evaluation of an older sibling of the students named by the parent in her complaint, the primary purpose of the meeting was to discuss violations of Section 504 with the Section 504 Coordinator for the district who is also the Assistant Director

of Special Services. This investigator does not have the authority to investigate alleged violations regarding Section 504 and did not do so.

The Assistant Director of Special Services/Section 504 Coordinator met one-on-one with the parent as requested. A breach of meeting etiquette such as an interruption by the district counsel's entering the room to introduce himself is not a topic that is addressed by special education statutes and regulations. A violation of special education statutes and regulations *is not* substantiated on this issue.

Issue Four

The district failed to honor the parent's request regarding the "buddy class" assignment of student two.

Parent's Position

According to the parent, the building principal refused to honor her request that a particular teacher's classroom not be designated as the "buddy class" for student two's classroom during his first grade year. It is the position of the parent that her older child had not been treated appropriately by that teacher, and the parent wanted to avoid potential problems for student two.

District's Position

The district contends that student two's classroom and the classroom of the teacher identified by the parent have not been paired for "pals" activities.

Applicable Statutes and Regulations

A formal complaint must allege a violation of special education laws or regulations has occurred during the 12-month period prior to the date that the complaint is received by the commissioner of education (K.A.R. 91-40-51(a) and (b)).

As stated above under Issue Two, decisions regarding general education classroom assignment are generally made outside of the IEP team process. While a parent may express a preference to have their child assigned to a particular general education teacher for all or part of the school day or for a given activity, there is no legal special education requirement for a district to honor that request.

Investigative Findings

The student's April 12, 2022 IEP did not address a PC Pals classroom assignment.

In emails to the complaint investigator dated April 30, 2023, the parent reported that she had "advocated for change [in student two's PC Pals class assignment], and at first it was

unaccepted...then it was accepted." The parent states that these events transpired during the tenure of a principal who left the district in June of 2021. The student was enrolled in Kindergarten for the 2020-21 school year.

Records provided by the district show that student two was not placed for PC Pals with the general education teacher objected to by the parent during either the 2021-22 (first grade) nor the 2022-23 (second grade) school years.

Summary and Conclusions

The concern which the parent has identified in this issue occurred more than one year prior to the date that this complaint was received and was by report of the parent resolved through discussion with district staff. Additionally, as stated above under Issue One, the general education classroom assignment of student two is not covered by special education statutes and regulations.

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

Issue Five

The district has not provided the students with a "free" public education.

Parent's Position

It is the position of the parent that the district has not provided the "free" public education to the students as required by FAPE because the family has been asked to pay an instructional materials fee for both students.

District's Position

It is the position of the district that federal regulations specifically allow districts to charge the same incidental fees for students who are disabled as are required for nondisabled students.

Applicable Statutes and Regulations

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. "At no cost" means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program (34 C.F.R. 300.39 (a) and (b)).

At K.S.A. 72-3352, Kansas statutes state:

> *"The board of education of any school district may purchase, for the use of pupils of the district, any of the following:*

a) *Workbooks and materials which are supplemental to textbooks used in specific courses;*

b) *specialized clothing and towels for use in physical education, shop, and science courses;*

c) *musical instruments for use in band or orchestra;*

d) *instructional materials for the use of technology in specific courses; and*

e) *materials or supplies which are consumed in specific courses or projects or in which the pupil may retain ownership upon completion of such courses or projects."*

At K.S.A. 72-3353, Kansas statutes state:

"The board of education of any school district may prescribe, assess and collect fees and supplemental charges for:

1. *The use, rental or purchase by pupils of any of the items designated in K.S.A. 2018 Supp. 72-3352 and amendments thereto, to offset, in part or in total, the expense of purchasing such items; and*
2. *participation in activities, or the use of facilities, materials and equipment, which participation or use is not mandatory, but optional to pupils, whether incidental to curricular, extracurricular or other school-related activities."*

Investigative Findings

At JS, the Board Policies for the district include a section entitled "Student Fees" stating:

"The Board of Education, in accordance with state statutes may prescribe, assess and collect fees and supplemental charges for:

1. *the use, rental, or purchase of items used as materials and supplies in specific courses, or for projects in which the pupil retains ownership upon completion of the course or project, to offset the expense of purchasing such items in part or in total; or*
2. *participation in activities, or the use of facilities, materials and equipment, which participation or use is not mandatory, but optional to pupils, whether incidental to curricular, extra-curricular or other school-related activities."*

For the 2022-23 school year, the district charged a $100.00 per student fee for all students as part of the regular education program. Using a process which allows this fee to be reduced based on the financial ability of the parent to pay, this fee was reduced to $50.00 per student for this family.

No charges have been levied for the provision of special education services to the students.

Summary and Conclusions

While the parent was required to pay a general education materials fee for each student, all students in the building were assessed that same fee, and the fee for this family was reduced by half under a district process which is based on a family's ability to pay. Such fees are specifically allowed under federal regulations. Special education services were provided to both students at no additional cost. A violation of special education statutes and regulations ***is not*** substantiated on this issue.

Corrective Action

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

Investigation of Complaint



Diana Durkin

Complaint Investigator

Right to Appeal

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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.

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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 #253
ON August 1, 2022

DATE OF REPORT August 31, 2022

This report is in response to a complaint filed with our office on behalf of ------ by his aunt, ------. In the remainder of the report, ------ will be referred to as "the student." ------'s aunt is ------. She is the student's adoptive parent. In the remainder of this report, she will be referred to as "the parent," or "the complainant."

The complaint is against USD #253 (Emporia Public Schools) and the Flint Hills Special Education Cooperative. In the remainder of the report, " the "school," the "district," the "local education agency (LEA)" or the "cooperative" shall refer to USD #253.

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 August 1, 2022 and the 30-day timeline ends on August 31, 2022.

Investigation of Complaint

Donna Wickham, Complaint Investigator, interviewed the parent by telephone on August 2 and 22, 2022.

Tara Glades, Executive Director of Special Services, Flint Hills Special Education Cooperative, Deirdre Deiter, School Psychologist, Emporia Middle School, USD #253 and Allyson Waddle, Assistant Vice Principal, Emporia Middle School, USD #253 were interviewed on August 15, 2022.

The Complaint Investigator also exchanged emails with the #USD 253 staff between August 2, 2022 and August 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 LEA and the complainant. The following materials were used as the basis of the findings and conclusions of the investigation:

- Email from Victoria Clark, Special Education Teacher, USD 253 to Ms. Waddle, dated September 20, 2021 at 7:13 p.m.
- Individualized Education Program (IEP) including Behavior Intervention Plan (BIP) and Team Meeting Record dated, October 11, 2021
- Prior Written Notice (PWN) dated, October 12, 2021
- Email from parent to Ms. Waddle, dated October 28, 2022 at 8:24 a.m.
- Email from parent to Ms. Waddle, dated January 18, 2022 at 12:02 p.m.
- Email from parent to Ms. Waddle, dated January 20, 2022 at 3:24 p.m.
- Email from Ms. Waddle to parent, dated January 20, 2022 at 3:35 p.m.
- Email from parent to Ms. Waddle, dated January 20, 2022 at 3:40 p.m.
- Email from Ms. Waddle to parent, dated January 20, 2022 at 4:14 p.m.
- Neuropsychological Assessment, dated January 21, 2022 conducted by J. Joshua Hall, Ph.D., ABPdN Board Certified Pediatric Neuropsychologist
- Email from Jessica Acosta, Community Relations Secretary, USD 253 to Ms. Glades, dated April 8, 2022 at 10:20 a.m.
- Email from Ms. Glades to Lindsey Thompson, Special Education Teacher, Steven Bazan, Principal, and Emily Baker, Assistant Principal, dated April 10, 2022 at 12:47 p.m.
- Email from Mr. Bazan to Ms. Glades, Ms. Baker, and Ms. Thompson, dated April 11, 2022 at 6:55 a.m.
- Email from Ms. Glades to Ms. Thompson, Mr. Bazan, and Ms. Baker dated April 11, 2022 at 7:46 a.m.
- Email from Mr. Bazan to Ms. Clark, Ms. Deiter, Megan Troxel, School Psychologist, USD 253; Amber Stevens, Special Education Instructional Coach, USD 253, Ms. Waddle and Ms. Glades dated April 11, 2022 at 9:18 a.m.
- Email from Mr. Bazan to Ms. Glades, dated April 11, 2022 at 9:27 a.m.
- Email from Ms. Clark to Mr. Bazan, Ms. Deiter, Ms. Troxel , Ms. Stevens, Ms. Waddle, and Ms. Glades dated April 11, 2022 at 10:19 a.m.
- Email from Ms. Deiter to Ms. Clark, Mr. Bazan, Ms. Troxel , Ms. Stevens, Ms. Waddle, and Ms. Glades dated April 11, 2022 at 11:09 a.m.
- Mediation Agreement, dated July 19, 2022
- Email from Megan Laflin, Attendance Secretary to Mr. Bazan, dated April 21, 2022 at 6:16 a.m.
- Student Behavior Data Collection Sheet, dated May 11, 2022
- Team Meeting Record, dated May 12, 2022
- PWN, dated May 13, 2022
- Emporia Middle School Attendance Records by list and class, 2021-2022 School Year
- Annual Diagnostic Assessment, dated June 3, 2022 prepared by Shane Mullen, LCP, Mental Health Care, CrossWinds Counseling and Wellness

- District response to allegations dated August 10, 2022
- Emporia Middle School, Jr. Spartans, Student Handbook, 2022-2023

Background Information

This investigation involves a 14-year-old male student who is entering ninth grade at Emporia High School in USD #253. He receives special education services as a child with other health impairments. The health impairments noted from the January 21, 2022 Neuropsychological Assessment include Tourette syndrome, by history; Attention-Deficit/Hyperactivity Disorder, Combined Presentation, by history; Autism Spectrum Disorder, by history; and Post-Traumatic Stress Disorder (PTSD), by history. He was re-evaluated during the spring of the 2021- 2022 school year and his team met on May 12, 2022 to reflect this evaluation information.

The student first enrolled at USD #253 as a third grader with a move-in IEP for special education services. Prior to USD #253 he attended USD # 490, El Dorado Public Schools. His mother reports he began receiving special education services as a preschooler. He lives with his adoptive mother.

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 #253, 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) and the student's service minutes during the last 12 months.

Positions of the Parties

The complainant alleged that the student was not provided twenty minutes of transportation services and ten minutes of adult support during transitions, five days every week, resulting in the student earning tardies for his late arrival to classes that were turned into absences. The student's disabilities necessitate him to have direct adult support to ensure he arrives in his classroom in a timely fashion. Further, the Behavior Intervention Plan (BIP) indicated "Adult Support during transition(s) as a Scheduling factor to allow the student to be more successful. Instead of adult support to arrive to classes after he checked in to the school office his teacher was notified he was present, but left to walk to class on his own. The ten minutes of adult

support during transitions should be used to support him in the hallway when he enters the building at the beginning of his school day.

The district responded that they did not fail to implement the student's IEP specifically by not following the student's behavior intervention plan and the IEP service minutes during the last 12 months. The BIP, from the October 11, 2021 IEP was in place. Below is a screenshot of the behavior log entries for the student during the 2021-2022 school year, showing that the BIP was implemented and effective.



The IEP states that the student will receive 20 minutes per day of special transportation, 10 minutes per day of adult support for transitions, 132 minutes 4 days weekly and 108 minutes 1-day weekly ELA and elective support, 66 minutes 4 days weekly and 54 minutes 1 day weekly of resource math. The student did receive these services while attending Emporia Middle School. The student was transported by special transportation daily per the IEP. Specifically, a staff member met this student in the morning as he exited special transportation, and a staff assisted the student with transitions between classrooms during the day as possible. Any tardies earned between classes was due to the student refusing to stop using his Chromebook rather than lack of supervision. The student received adult support in English Language Arts and electives per the IEP and received Math instruction in the resource room by a staff member daily. Regular progress notes were provided to the parent showing implementation of the goals and objectives and data sheets show that staff were allocated to the student by their data collection and anecdotal notes.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the complainant and staff of USD #253.

The BIP contained in the October 11, 2021 IEP was written to address off task behavior, arguing and clenching fists exhibited during transitions between classroom instructional times, such as small group activities to independent seat work. The de-escalation behaviors included using a break pass and previously taught coping strategies.

The BIP contained in the October 11, 2021 IEP included "adult support during transition(s)" as a Daily Structure and Support to allow the student to be more successful.

Staff reported on August 15, 2022 that when staff began to observe the student engaging in transitional behaviors that might suggest a future behavior concern, the student was encouraged to use a break pass to exit the classroom in order to calm himself or self-regulate. The district's fidelity in following the Behavior Intervention plan is the reason for the lower amount of behavior log entries.

Data collection sheets (e.g., May 11, 2022) showed that data were collected on components of the BIP regularly during the past 12 months.

The IEP dated October 11, 2021 included 10 minutes of direct service five days a week in the form of adult support during transitions .

Staff explained on August 15, 2022 that the 10 minutes of direct service five days a week in the form of adult support during transitions was designated to an adult being present during changes in instructional activities in the classroom to assist the student in using a break card or using coping strategies as outlined in the De-escalation Strategies.

The IEP dated October 11, 2021 included 20 minutes of transportation service five days every week.

On August 15, 2022, the USD #253 staff explained that a procedure was in place for a staff member to meet this student in the morning as he exited special transportation and accompany him to check in and proceed to class.

Emails dated January 20, 2022 show an occasion that procedure was not followed, and the parent contacted the school. The vice principal responded that the procedure will be followed, and the student's attendance would be corrected.

The IEP dated October 11, 2021 included 132 minutes of special education service four days every week and 108 minutes, one day every week in the form of adult support during general education curriculum for electives and language arts and 66 minutes of direct service four days every week and 54 minutes, one day every week in resource mathematics. These minutes were verified by staff reporting the student's schedule and the team staffing reports dated, October 11, 2021 and May 12, 2022 and PWNs, dated October 12, 2021 and May 13, 2022.

Staff explained during the August 15, 2022 call that the student and staff schedules were designed to meet the service minutes.

Applicable Regulations and Conclusions

The IDEA at 34 C.F.R. 300.320(a)(7) specifies the projected date for beginning the services and anticipated frequency, location and duration of those services and K.A.R. 91-40-19(a) states that each agency, teacher, and related services provider shall provide special education and

related services to an exceptional child in accordance with the child's IEP and shall make a good faith effort to assist the child to achieve the goals and objectives stated in the IEP.

In this case, it was determined that the IEP service minutes and BIP were delivered to the student as written in the October 11, 2021 IEP. It is noted that there was confusion between the parent and district about what constituted a "transition" on the IEP.

The adult support during transitions was written for implementation during classroom instruction when the activity type was changing rather than supervising the student in the hallways to ensure he moved in a timely fashion from class to class. It was found that the district did implement the service minutes, IEP, and Behavior Intervention during the past 12 months for the student.

It is noted that there are emails and parental concerns about the student being distracted and talking about non-school topics in the hallways and refusing to stop and enter the classroom at the start of the class period. This resulted in his being marked as tardy, at least in some instances. Although the tardies do not have any impact on attendance or truancy the IEP team may wish to meet and determine if the student's behavior should be addressed in the IEP.

Based on the foregoing, the allegation that USD #253 did not implement the IEP, specifically the service minutes and BIP *are not substantiated*.

Issue Two

> The USD #253, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), the IEP team failed to meet to discuss changes to the IEP in response to student tardiness and absences.

Positions of the Parties

The complainant alleged that the student has health and disability-related issues that resulted in him being absent or tardy to class and attending school on a reduced schedule of five hours a day. When his absences and tardies continued during the last twelve months, instead of conducting and IEP meeting to discuss how to support him to be successful, he was held to the district policy related to truancy. Specifically, his tardies were turned into absences and his absences were counted as full school days rather than his shortened days as specified in his IEP. Some of these tardies were a result of not providing adult support to ensure he arrived in his classroom at the beginning of his shortened school day.

USD #253 contends that tardies and absences were not identified by the IEP team as special education issues at the time of writing or reviewing the IEPs during the last twelve months. The school recorded tardies and absences as excused throughout the school year when notified

that the student was not feeling well, or the parent chose to keep the student home. Tardies resulting from the student refusing to enter a classroom at a class change were becoming problematic during the 2021-2022 school year. The student liked to walk in the hallway with his Chromebook open trying to play games or watch videos. The IEP case manager reached out to the parent in February to get consent for the 3-year reevaluation and the team mutually agreed at this meeting date to determine if tardies and absences should be addressed as a part of his IEP. The parent phoned the Director on April 8, 2022 saying he had started a new medication and that he was having difficulty at school. At that time, an IEP/evaluation meeting was scheduled for May 12, 2022.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parents and LEA staff in USD #253.

The findings of Issue 1 are herewith incorporated into this issue.

The IEP dated October 11, 2021 does not include any goals, services, or accommodations for absences or tardies, nor does the BIP address absences or tardies.

The school staff reported on August 15 that the parent was offered an IEP meeting to discuss attendance and tardies on or about April, 2022, but a decision was made to wait for the previously scheduled May 12, 2022 meeting. The parent does not remember this, but reported that she did not request a specific meeting to discuss absences or tardies.

The PWN, dated May 12, 2022 and team staffing report, dated May 11, 2022 do not show discussion of tardies or attendance.

The PWN, for the revised IEP based on a reevaluation, dated May 12, 2022 was not signed by the parent. The parent reports she did not agree with the IEP. The Mediation Report dated July 19, 2022 states that the IEP will be reviewed and amended before the school year starts. The parent and district report that an IEP is signed and in effect for the start of the school year.

Attendance. The attendance documentation for 2021-2022 showed missed class “blocks”, not total missed school days. Each school day was made up of 6 blocks, however the student was on an abbreviated schedule based on an IEP team decision where he attended 4 blocks per day. The attendance data recorded 127 block unexcused absences, and additional 55 were excused, 54 were medically excused, and 16 were excused for absences.

The Emporia Middle School, Jr. Spartans, Student Handbook lists these procedures for attendance:

> A parent/guardian should report student absences to the office by 10:00 a.m. or send a brief written explanation with him/her when he/she returns to school.

Only absences due to personal illness, illness in the family, doctor appointments, religious observances, school-sponsored activities or events, or family emergencies will be excused. An unexcused absence is recorded when no notice from the parent or guardian is provided to the office or if absences become excessive. Automated phone calls are generated for any unexcused absence.

Any student under the age of 18 who is absent more than three consecutive days, five or more days in any semester, or seven or more days in a school year without a valid excuse is declared a truant. When a student has been declared a truant, a hearing may be held to determine if the student will be suspended or expelled. If a student is not 18 years old, the proper juvenile authority will also be notified, as required by law, so that appropriate action can be taken.

The guidelines for handling unexcused absences are: Once a student has accumulated seven (7) unexcused days in a school year and/or 35 total unexcused blocks, he/she will be assigned one (1) day of in-school suspension. If the student is less than 17 years old, a truancy affidavit will be filed with the county attorney.

Tardies. According to the Emporia Middle School Attendance Records by list and class for 2021-2022 school year 17 tardies were recorded for the student during the 21-22 school year. Eight of those tardies were excused due to mom phoning and bringing him in late, (e.g., 4/24/2022, 4/20/2022, 2/14,2022). The remaining nine tardies were unexcused with documentation notes stating, "student said mom overslept (5/6/2022) ," 'student overslept (3/28/2022), etc. or were the result of the student refusing to enter the next transitioning classroom.

A January 18, 2022 email from the parent to vice principal questions "how the student is counted as tardy when someone is supposed to keep him on task to get to his classes on time". Further, she states ..."at this point this needs some attention instead of it looking like he isn't going to school when it's tardies adding to absences on him at school and not in his class so he is counted as absent"

The district reported on August 15, 2022 that the student received no consequences for the unexcused tardiness.

The Emporia Middle School, Jr. Spartans, Student Handbook lists these procedures for unexcused tardy violations:

- Students who arrive to class after the tardy bell rings will be counted as an unexcused tardy.

- Students are allowed two tardies per semester without consequence. On the third tardy, the student will begin to receive consequences. Excessive tardies may result in a team meeting to determine an individual plan of action.

Applicable Regulations and Conclusions

The IDEA at 34 C.F.R. 300.320(a) and K.A.R. 91-40-16 provides: that the IEP team meet to develop, review, and revise the IEP as appropriate, to address any lack of expected progress toward the annual goals and as well, Information about the child provided to, or by, the parents.

Based on the foregoing, the allegation that USD #253 failed to meet the IEP team to discuss how to improve the IEP due to attendance and tardiness *is not substantiated*.

The IEP team did not have an obligation to convene the team to discuss student tardiness and attendance as a special education service as it was not identified as a learning or behavioral priority for the student during the annual IEP meeting. It is noted that the parent did ask for clarification of how tardies and absences were managed for her child due to his disabilities. The number of absences and tardiness was high and resulted in loss of opportunity to learn. It is highly recommended that the IEP team address as part of the annual IEP review if the student's managing his time between classes should be addressed in the IEP.

Complaint Investigator

Donna Wickham

Donna Wickham, Complaint Investigator

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